



भारत का राजपत्र

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सं. 27] नई दिल्ली, जून 26—जुलाई 2, 2016, शनिवार/आषाढ़ 5—आषाढ़ 11, 1938
No. 27] NEW DELHI, JUNE 26—JULY 2, 2016, SATURDAY/ASADHA 5—ASADHA 11, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)
नई दिल्ली, 30 जून, 2016

का.आ. 1295.—पेंशन निधि विनियामक और विकास प्राधिकरण अधिनियम, 2013 (2013 का 23) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद् द्वारा, श्री प्रदीप चड्हा को पदभार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए अथवा 62 वर्ष की आयु पूरी होने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, (आवास और कार की सुविधा के बिना) 3.75 लाख रुपए प्रति माह के समेकित वेतन पैकेज में पेंशन निधि विनियामक और विकास प्राधिकरण (पीएफआरडीए) में पूर्णकालिक सदस्य (विधि) के पद पर नियुक्त करती है।

[फा. सं. ए-12034/1/2014-पीआर]
सुधीर श्याम, निदेशक (बीओ-II एवं पीआर)

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 30th June, 2016

S.O. 1295.—In exercise of powers conferred by Section 4 of the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013), the Central Government hereby appoints Shri Pradeep Chaddah as Whole-Time Member (Law) in the Pension Fund Regulatory and Development Authority (PFRDA), with the consolidated pay package of Rs. 3.75 lakh per month (without facility of house and car) for a period of five years w.e.f. the date of assumption of charge of the post, or till attaining the age of 62 years, or until further orders, whichever is the earliest.

[F.No. A-12034/1/2014-PR]
SUDHIR SHYAM, Director (BO-II & PR)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रबिक्षण विभाग)

नई दिल्ली, 22 जून, 2016

का.आ. 1296.—केन्द्र सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान राज्य सरकार, गृह (ग्रेड-अ) विभाग, जयपुर की अधिसूचना सं.एफ19 (30) होम-5/2015 दिनांक 28.09.2015 के माध्यम से प्राप्त सहमति से पुलिस स्टेशन रामगढ़ जिला अलवर में भारतीय दड संहिता, 1860 (1860 का अधिनियम संख्या 45) की धारा 147,148,149,302,201 एवं 120-बी के तहत दर्ज एफआईआर संख्या 235/14 दिनांक 16.06.2014 तथा उक्त मामले से उत्पन्न या उसी संव्यवहार में किये गये अन्य अपराधों की जांच करने के लिए दिल्ली पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का समस्त राजस्थान राज्य में विस्तार करती है।

[सं. 228/47/2015-एवीडी-II]
मो. नदीम, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 22nd June, 2016

S.O. 1296.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Rajasthan, Home (Gr-V) Department, Jaipur vide notification No.F.19(30)Home-5/2015 dated 28.09.2015, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the state of Rajasthan for the investigation of FIR No.235/14 dated 16.06.2014 under sections 147,148,149,302,201 and 120-B of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Ramgarh, District Alwar or any other offences committed in the course of the same transaction arising out of the said case.

[F. No. 228/47/2015-AVD-II]
Md. NADEEM, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 21 जून, 2016

का.आ. 1297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एचबीएस के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ वाद संख्या 5/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/06/2016 को प्राप्त हुआ था।

[सं. एल-42012/212/2002-आईआर (सीएम-II)]
राजेन्द्र सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 21st June, 2016

S.O. 1297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award ID. Complaint (Ref. No. 5/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of HBS Enterprises, Smt. Sucheta Kriplani Hospital and Medical College, and their workmen, received by the Central Government on 21/06/2016.

[No. L-42012/212/2002-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT – II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID. Complaint 5/2004

Sh. M.A Khan & Others,
Bhartiya Shramik Union,
B-2 , Palika Niwas, Lodi Colony, New Delhi.

Versus

The Medical Superintendent,
Smt. Sucheta Kriplani Hospital & Medical College,
New Delhi.

M/s. HBS Enterprises, RZ-F- 776/31,
Raj Nagar –II, Palam Colony, New Delhi.

AWARD

Sh. M.A Khan and 19 Others. Workmen filed complaint u/s. 33-A I.D. Act 1947 in this Tribunal on 03.02.2004.

On the basis of which this I.D. case was registered and notices were issued to respondents to file reply on date fixed.

It is relevant to mention here that aforesaid complainants in their aforesaid complaint alleged as follows:-

1. That the above workmen are connected with the dispute in I.D.No.62/2003 referred by the Ministry of labour vide their order No.L-42012/212/2002-IR (CM-II) dated 7.5.2003 for their regularization/absorption in the establishment of Smt. Sucheta Kriplani Hospital and Lady Harding Medical Collage, New Delhi. Copy of the said reference is annexed as Annexure-A with this application.

2. That all the above workmen connected with the dispute in ID.No.62/2003 and they were engaged for performing their duties as Security Guards for the security and watching of the building of Sucheta Kriplani Hospital as well as Lady Harding Medical College and Kalawati Saran Children Hospital respectively w.e.f. 1.7.99 through the fake contractor i.e. Sh. Sunil Kumar of M/s. HBS Enterprises.

3. That all the workmen had been performing their duties from the date of their initial employment i.e. 1.7.99 within the premises of the Medical Superintendent, Lady Harding Medical Collage and Sucheta Kriplani Hospital and their duties were also supervised by Dr. L.B.S. Dey, Additional Medical Superintendent and the contractor is only to distribute the wages even less than minimum wages fixed under the Minimum Wages Act 1948.

4. That whenever the misconduct committed by any of the workmen connected the main dispute as well as in this claim application, the warning letters were issued by the authorized representative of Medical Superintendent. So the duty of the workmen were duly supervised and even the duty charts were also prepared by the principal employer i.e. office of the medical superintendent.

5. That the management no.1 i.e. the Office of the Medical Superintendent had/have employed 54 Security Guards for the watch and ward of the building of the management no.1 w.e.f. 1.7.99 and the said work is a perunal nature of job and still inexistence.

6. That the workmen also requested the principal employer as well as so-called contractor to pay the minimum wages as well as over time wages fixed under the Minimum Wages Act but they did not respond the request of the workmen and against the said the workmen also filed their claim application before the Authority Appointed under the Minimum Wages Act 1948 cum-Regional Labour Commissioner (Central), Govt. of India, New Delhi.

7. That when the notices of the ID.No 62/2003 received by the management as well as contractor were got annoyed to the workmen connected with the dispute and terminated the services of the workmen w.e.f. 1.12.03 without giving one month notice or notice pay in lieu of the notice as well as compensation/gratuity etc. as provided u/s 25F(a) &(b) of the Industrial Dispute Act 1947, and both of the management did not follow the provision of Section 33 of the Industrial Dispute Act and no permission was sought from this Hon'ble Tribunal. So the termination of the services of the above workmen are illegal and unjustified.

8. That all the activities of both the management are against the provisions of Minimum Wages Act as well as Contract Labour (Regulation & Abolition) Act 1970.

9. That the appropriate competent authority under the Contract Labour (Regulation & Abolition) Act 1970 have neither granted the licence for engaging these contract labour to the contractor nor the management of Medical Supdt., Lady Harding Medical College and Sucheta Kriplani Hospital. This, the principal employer has no registration to engage contract labour through the contractor thereby also violated the provisions of Section 9 & 12 respectively of the said Act.

10. That the action taken by the management to terminate the services of the workmen is absolute illegal, unjustified, unwarranted and uncalled for as the management did not follow the provisions of Section 25 F and Section 33 of the Industrial Dispute Act 1947.

11. That till the disposal of the dispute in ID.No.62/2003, the termination of these workmen are honest and the workmen are entitled to their wages as they were getting before the date of their termination i.e. before 30.11.03.

12. That the workmen are entitled to their wages fixed for unskilled workmen under the Minimum Wages Act 1948 till the disposal of the ID.No.62/2003.

13. That the workmen are entitled to get their wages w.e.f. 1.11.03 @ Rs. 2783/- as unskilled wages fixed under the Minimum Wages Act 1948 and also revised till the disposal of this complaint application before this Hon'ble Tribunal.

PRAYER

In view of the above, it is therefore, prayed that the Hon'ble Tribunal may kindly quash the order of termination in respect of the above workmen as they violate the provisions of Section 25 F as well as Section 33 of the Industrial Dispute Act and award re-instatement of these workmen from the same position as they were performing their duties prior to 1.12.03 and also award the wages as unskilled labour till the disposal of this complaint application u/s 33 as the termination is illegal as well as unjustified.

Respondent No.1 filed its reply on 17.02.2004. Where-in it mentioned as follows:-

1. That I have been authorized by the competent authority to file this reply on behalf of the respondent No.1/Management.
2. That I am well acquainted with the facts and circumstances of the present case in my official capacity.
3. That I have read the contents of the present case and I state that the content mentioned therein to the extent they are inconsistent with the submissions made hereinafter in this reply are incorrect and denied. Unless any averment and contention is specifically admitted or traversed, the same may be treated as denied.

PRELIMINARY OBJECTIONS:-

1. That the claim before the Hon'ble Tribunal is made on the basis of misconception of law by the workmen and also on misleading facts.
2. That it is stated that this claim is not maintainable against the replying respondent before the Hon'ble Tribunal in as much as there has not been employer-employee relationship in any manner between the workmen and the management/replying respondent. The workmen were the employee/workers of the concerned contractor and they were working under the direct control and supervision of the contractor. The replying respondent at no point of time employed the workman nor was they paid the wages by the management /replying respondent. The contractor employs his workmen for doing the particular job and payment is made by the contractor to its workmen. Accordingly, the payment towards the specific job entrusted to the contracted was

made to the contractor, who had employed the workmen for the same and paid the wages as agreed between the workmen and contractor.

3. That this Hon'ble Tribunal does not have jurisdiction to adjudicate the dispute between the parties i.e. the workmen and the replying respondent for want of employee-employer relationship between the workmen and the management/replying respondent.
4. That there has not been any policy of the department to regularize the workmen of the contractor and in absence of the policy or the scheme for regularization /reinstatement of such contractor /workers in the department , the workmen cannot claim reinstatement or regularization.
5. That the reference before this Hon'ble Tribunal is bad and as a result of non application of mind by the competent authority in a much a it failed to take into account that there was no employer-employee relationship between the replying respondent and the workmen /claimants . Therefore, the reference is liable to be returned without entering into the same.

PARAWISE REPLY :

- 1&2. That the contents of corresponding paras to the extent of being matter if record, need no reply. It is submitted that the respondent No.1 has given contract to M/s. HBS Enterprises i.e. the respondent No.2 herein, for providing security services after inviting tenders. The workmen for providing security to the respondent No. 1 institution were engaged by the said contractor. Hence, the question of their regularization /absorption under the respondent no.1 does not arise. It is wrong to say that the workmen were engaged by the replying respondent/management through the fake contractor i.e. Sh. Sunil Kumar of M/s. HBS Enterprises. A copy of the contract entered into between the respondent No.1 and respondent No.2 and a copy of letter dated 22.12.2003 from the respondent No.2 respondent No.1 in this regard are annexed hereto as Annexure -R-1 and Annexure -R-2 respectively.
3. That the contents of the corresponding para to the extent of being matter of record, need no reply. However, it is submitted that the workmen were engaged directly by the contractor for time bound job. It is further submitted that the contractor was directly responsible for the job for the contractual period as provided in the contract agreement and the workmen were under direct control and supervision of the respondent No.2 and the wages for the work done by the workmen were also being paid directly by the contractor. The respondent No.1 has nothing to do with the workmen regarding their employment and payment of the wages . It is further submitted that the workmen had never worked under the direct control and supervision of the replying management and there had never been any employer-employee relationship between the replying management and the workmen.
4. That the content of the corresponding para, except those being matter of record, are wrong , misleading and misconceived and hence vehemently denied. It is submitted that the workmen were never prompt and vigilant towards their duty and the contractor was informed by the replying management time and again. It is further submitted that the placement of duty was given to the contractor to provide security as per requirement of the respondent No.1 institution.
5. That in reply to the averments in the corresponding para, it is submitted that the contractor was paid lump sum consolidated amount on monthly basis as per the terms of the agreement for disbursement to Security Guard/Supervisor and as per agreement clause they have to perform 8 hour duty. It is submitted that if at all the workmen had any kind of grievance, including lesser wages, they being the employees of the contractor, the replying respondent cannot be held responsible therefore. It is patently wrong and vehemently denied that there has been any regular nature of work which was done by the workmen or the workmen have any legal right to claim regularization for the same. It is further submitted that the present reference before this Hon'ble Tribunal by Government of India, Ministry of Labour/Shram Mantralaya, New Delhi is bad and as a result of non application of mind by the competent authority in as much as its failed to take into account that there was no employer-employee relationship between the replying respondent and the workmen /claimants. Therefore, the reference is liable to be returned without entering into the same.
6. That the content of the corresponding para, except those being matter of record, are wrong, misleading and misconceived and hence vehemently denied. It is submitted that the aforesaid contractor is appointing/ terminating authority in respect of security guards/supervisor and the replying respondent had not appointed/ terminated the services of any workmen, nor has made the payment to the workmen nor has controlled them. Besides, the replying respondent has made the payment in terms of the agreement and also as per the minimum wages, question of violation of any provision of law and /or act does not arise. It is further wrong to say that the workmen are entitled for any relief from the replying respondent. It is further submitted that the

contract has been terminated w.e.f 30.11.2003. Hence, the liabilities of paying salary to the workmen does not rest with the replying respondent. Besides, in view of the letter dated 22.12.2003 (Annexure –R-2) as well , it is ample evident that the replying respondents is not liable to make any payment or the workmen have any legal rights to seek regularization, pay scale or any service benefits from the replying management.

PRAYER :

In view of the facts and submissions, it is most respectfully submitted that the claim is devoid of merits and deserve NIL award in the matter.

Respondent No. 2 filed its reply . Where-in it mentioned as follows:-

Preliminary Objections

1. That the terms of reference is illegal ultra virus and liable to be rejected, there was no material before the appropriate Govt. to refer the matter for adjudication.
2. That the workmen were appointed by the management No.2 for contract job in Smt. Sucheta Kripalani Hospital & Medical Collage i.e. Management No.2, further contract between Management No.1 & 2 ceased on dated 30/11/2003.
3. That Management No.2 is ready to reinstate the workmen in other industrial unit, but workmen refused the same as they are interested only in Management No.1.
4. That Workman left from his job of management No.2 by his own, so there is no cause of action is arised against the management and in favour of the workman because the service of the workman was not terminated by the management No.2.
5. That the claim of the petitioner is false frivolous and concocted as such the petition is not maintainable in the eyes of law.
6. That the workman have not come to the court with clean hands he have suppressed the true facts from the Hon'ble Court. Hence the petitioner/workman claim is liable to be dismissed.

That without prejudice to what is submitted above and in addition to the same. Reply parawise to the statement of claim is given as under :-

Reply on Merits

1. That para 1 of the statement of claim is matter on recort so no need to reply.
2. That para 2 of the statement of claim is wrong and denied. It is vehemently denied that workmen were engaged through fake contractor i.e. Management No.2.
3. That para 3 of the statement of claim as stated is wrong and denied, it is vehemently denied that management No.1 supervise the work of all the workmen, it is further denied that the wages as per minimum wages of the workmen was not paid by Management No.2.
4. That para 4 of the statement of claim as mention is wrong and denied, it is denied that management No.1 issued any warning, chargesheet or any other letter to any workman.
5. That para 5 of the statement of claim as mention is wrong and denied.
6. That para 6 of the statement of claim as mention is wrong and denied, it is vehemently denied that management No.2 did not paid their wages as per Minimum Wages Act.
7. That para 7 of the statement of claim as mention is wrong and denied. It is vehemently denied that management No.2 terminated the service of the workman, it is further reiterated management No.2 is still ready to reinstate the workmen in other Industrial Unit.
8. That para 8 of the statement of claim as mention is wrong and denied, it is vehemently denied that there is violation of Minimum Wages Act and Contract Labour Act 1970.
9. That para 9 of the statement of claim as mention is wrong and denied.
10. That para 10 of the statement of claim as mention is wrong and denied, it is vehemently denied that Management No.2 terminated the service of the all workmen.
11. That para 11 of the statement of claim as mention is wrong and denied, it is vehemently denied that workmen are entitled to get wages as they were getting before.
12. That para 12 of the statement of claim as mention is wrong and denied.

13. That para 8 of the statement of claim as mention is wrong and denied, it is vehemently denied that workmen are entitled to get wages till disposal of the case.

Last para of the statement of claim is prayer which is wrong.

It is therefore, most respectfully prayer that this Hon'ble Court may kindly be dismissed the claim of the workman with heavy cost.

Against Written statement of management No. 1 & management No. 2 workmen filed rejoinder. Through which he reaffirmed the contents of claim statement.

My Ld. Predecessor on 30.08.2007 framed following issues:-

1. Whether the management contravenes the provisions of Section 33 as alleged? If so its effect? OPW
2. Whether the workmen are entitled to reinstatement with back wages as claimed.
3. Whether there exist relationship of employer and employee between the workmen and respondent No.1?
4. Whether the workmen were appointed by management No.2 as alleged? If so its effect?
5. Relief.

Workmen complainant in support of their case examined following witness:-

WW1 Sh. M.A.Khan.

WW2 Sh. Ram Chander.

WW3 Sh. Om Prakash.

WW4 Sh. Ram Nath Prasad

WW5 Sh. Surender Yadav.

WW6 Sh. Hari Singh

WW7. Sh. Shivji Singh

WW8. Sh. Ram Ashray

WW9. Sh. Murari Kumar

WW10. Sh. Raj Bahadur

WW11. Sh.Rahul Rai

WW12. Sh. Subhadra Thakur

WW13. Sh. Laxman Singh

Workmen filed no document to support their case.

Management in support of its case examined Sh. Prem Chand as MW1.

Management also filed copies of certain documents:-

1. Reply on behalf of the Respondent No.1 Exh. MW1/B.
2. Agreement between respondent No. 1 and Respondent No.2 having 33 clause Ext. MW1/C.
3. Copy of Application dated 22.12.2013 by Sh. Sunil Kumar Principal & medical Superintendent Exht. MW1/D.
4. Copy of judgment dated 3.2.2010 passed by District & Sessions Judge Tis Hazari Courts, Delhi Dismissing the suit for recovery of Rs. 946,863 of Sh. Sunil Kumar , Contractor. Which was instituted on 19.10.2006.

I have heard the Ld. A/Rs for the parties at length and perused the pleadings and evidence of the parties on record to decide Issue No. 1.

Which makes it crystal clear that in the instant case workmen adduced their oral evidence.

While Respondent No. 1 (Hospital Management adduced its oral and documentary evidence to show that workmen were employed by Respondent No. 2 (Contractor). Contract expired on 30.11.2003. After expiry of Contract Respondent No. 2 filed recovery suit for an amount above Rs. 9 Lacks against Respondent No.1 on 19.10.2006. Which was dismissed by the then 2nd additional District Judge Tis Hazari Delhi on 3.2.2010.

In their complaint workman complained that they were terminated by Respondent No.1 during the pendency of their I.D. case No. 62/02 for their regularizations.

But evidence on record reveals that workmen were contractual employees of Respondent No. 2 and their contract of services has expired on 30.11.2003.

So they cannot be terminated as they raised their demand for their regularization.

Moreover there has not been any policy of the department to regularize the workmen of the contractor and in absence of the policy or the scheme for regularization /reinstatement of such contractor /workmen in the department; the workmen cannot claim reinstatement or regularization.

In addition to it workmen during their contract of services received wages from contractor hence they are not entitled to be employees of principal employer as per principle laid down by his Lordship of Hon'ble Delhi High Court in case Summer Fields Schools Vs. Regional Provident Fund Commissioner 2016 LLR 451 (Delhi High Court).

It is relevant to mention here that application /complaint of workmen u/s 33-A I.D. Act is not maintainable when the condition of service, breach of which is complained of, is not connected with the industrial dispute. This principle has been laid down by their lordship of Hon'ble Supreme Court in case of Indian Oxygen Ltd. Vs. Udaynath Singh (1970) 2LLJ 413 (S.C.). Which applies with full force in the instant case.

Hence Issue No.1 is liable to be decided against workmen and in favour of management no. 1. Which is accordingly decided.

So far issue No. 2 is concerned it is also liable to be decided against workman as they are contractual employees. They cannot claim reinstatement after expiry of period of their contract of services.

So far issue No. 3 & 4 concerned. It is proved fact that workmen were employed by Respondent No. 2 for Respondent No. 1 for a contract of services. Which expired on 30.11.2003.

So issue No. 3 & 4 are accordingly decided.

Issue No. 5 is relating to relief to workmen but issue No. 1 has already been decided by me against workmen and in favour of management No. 1. Therefore workmen are entitled to no relief. Issue No. 5 is accordingly decided complaint /application u/s 33- A I.D. ACT 1947 is accordingly dismissed.

Dated:-11.05.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 21 जून, 2016

का.आ. 1298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एचबीएस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण / श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 62/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/06/2016 को प्राप्त हुआ था।

[सं. एल-42012/212/2002-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the, 21st June, 2016

S.O. 1298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of HBS Enterprises, Smt. Sucheta Kriplani Hospital and Medical College, and their workmen, received by the Central Government on 21/06/2016.

[No. L-42012/212/2002-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI 110 032

Present:- Shri Harbansh Kumar Saxena

ID No. 62/2003

Sh. M.A Khan & Others,
Bhartiya Shramik Union,
B-2, Palika Niwas, Lodi Colony, New Delhi.

Versus

The Medical Superintendent,
Smt. Sucheta Kriplani Hospital & Medical College,
New Delhi.

M/s. HBS Enterprises, RZ-F- 776/31,
Raj Nagar –II Palam Colony, New Delhi.

AWARD

The Central Government in the Ministry of Labour vide notification No L-42012/212/2002-IR(CM-II) dated 07.05.2003 referred the following industrial Dispute to this tribunal for adjudication :-

“Whether the demand of the Bhartiya Shramik Union in relation to regularization/absorption of the services of 23 contract labour (list enclosed) employed through contractor M/s. HBS Enterprises, worked as Security Guards in the establishment of Smt. Sucheta Kriplani Hospital and Lady Harding Medical College, New Delhi is legal and justified ? If not, to what relief they are entitled to?”

On 22.05.2003 reference was received in this tribunal. Which was register as I.D No. 62/2003 and claimants were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/claimants filed claim statement on 25.08.2003. Wherein they stated as follows:-

1. That the workman whose particular are given are working with the management No.1 and depriving by their legal benefits and did not regularized while they are working against the regular nature of work with the management No. with effect from July1,1999.
2. That the workman Bhartiya Sharmik Union has raised industrial dispute before conciliation officer/Asstt. Labour commission Central New Delhi dt 23.11.2001. That the workman are working as Security Guards for the security and watching of the building of Suchita Kirpalani Hospital, New Delhi and Lady Harding Medical College and Kala Wati Sharam child hospital since 01.07.1999 continuously but the management are depriving their legal benefits by the way of payment of workman through the mediator or agent, known as management No.2 M/s H.B.S Enterprises, RZ-F-776/31, Raj Nagar Part-II , Palam Colony, New Delhi.
3. That the workman has moved a petition before the Hon'ble Court of Delhi and prayed before the court for regularization of the workman by the management No.1 according the rule. Management is depriving of the legal benefit of the workman unlawfully management No.1 cannot utilize the service of the workman through any mediator or contractor. For this purpose management No.1 has not any certificate from the appropriate government. Hon'ble High Court of Delhi Vide order dt. 27.11.2001. has directed to the workman for approaching the appropriate authority for claiming their rights for regularization, hence the dispute under the I. D. Act. 1947 has raised through the Union before Asstt. Labour commissioner central , New Delhi.
4. That the management appeared before the conciliation officer and moved their written statement same has signed by Rishi Kumar Chief Executive Officer on 18.03.2002 in his written statement. Management No.1 has stated that Lady Regarding Medical College and Smt. Suchita Kirpalani Hospital, are taking the services of workmen through the Management No.II for controlling crowds and maintaining queues in OPD and Wards and not allow smoking and chewing of Pan in OPD and Wards protection of persons and property of the Patients, evacuation of patients in case of fires of the natural calamities and prevention of unauthorized entry in to the premises of the hospital , collecting intelligence about antisocial and other subversive elements in the

crowd inside the premises of the hospital , fire fighting and any other work of similar nature assigned to the contractor by the hospital management (about the crowd inside the hospital) from time to time .

5. Workman Union has submitted their Rejoinder through the Union on 27.03.2002 and demanded for regularization of workmen on the basis of regular nature of work but the management did not care on the demand of workman union, so the dispute is referred before Hon'ble Court vide order No. L-42012/212/2002-IR (CM-II) Govt. of India/Bharat Sarkar, Ministry of Labour /Sharam Mantralaya , New Delhi dt. 7.05.2003.
6. That the above action of the management is unlawful, unjust, arbitrary and against the principal of natural justice. Workmen are entitled for regularization with the management No. 1 and they are entitled for regular pay scale and other legal service benefit according the I.D. Act , 1947.

It is , therefore, prayed before the Hon'ble Court to pass an award in the favour of workmen and against the management with the direction to the management for regularization absorption of the services of 23 workmen, who are deprived of their legal benefit through the contractor or the mediator in the establishment of Smt. Suchita Kirpalani Hospital , Lady Harding Medical College, New Delhi and KalaWati Sharan Child Hospital, New Delhi in the interest of natural justice and constitutional right of Indian citizen.

Respondent No.2 filed written statement against Claim statement. Wherein it stated as follows:-

Preliminary Objections:

1. That management No. 2 is running the business of providing job work i.e. Security Guards etc. on contract basis.
2. That the workmen were appointed by the management No.2 for contract job in Smt. Sucheta Kripalani Hospital & Medical College [Lady Harding] i.e. Management No.1, further contract between management No.1 and 2 ceased on dated 30.11.2002.
3. That management No.2 is ready to reinstate the workmen in other industrial unit, but workmen refused the same as they are wanted to work only with management No. 1 only.
4. That there is no cause of actions is arised against the management No. 2, as management No.2 is still ready to reinstate the workmen in other sites.

That without prejudice to what is submitted above and in addition to the same. Reply parawise to the statement of claim is given as under:-

REPLY ON MERITS

1. That Para 1 of the statement of claim as mention is wrong and denied, it is vehemently denied that workman were workmen of management No.1.
2. That Para 2 of the Statement of claim is mention is wrong and denied, it is again submitted workmen were appointed by the management No.1 and working under control and supervision of Management No. 1.
3. That Para 3 of the statement of claim as mention is wrong and denied.
4. That Para 4 is matter on record.
5. That Para 5 is matter on record.
6. That Para 6 of the statement of claim as mention is wrong and denied, it is vehemently denied workmen are entitled for regularization with the management No.1

That last para of statement of claim is prayer which is wrong and denied.

Respondent No.1 filed written statement against Claim statement. Wherein it stated as follows:-

1. That I have been authorized by the competent authority to file this reply on behalf of the respondent No.1/Management.
2. That I am well acquainted with the facts and circumstances of the present case in my official capacity.
3. That I have read the contents of the present case and I state that the content mentioned therein to the extent they are inconsistent with the submissions made hereinafter in this reply are incorrect and denied. Unless any averment and contention is specifically admitted or traversed , the same may be treated as denied.

PRELIMINARY OBJECTIONS:-

1. That the claim before the Hon'ble Tribunal is made on the basis of misconception of law by the workmen and also on misleading facts.

2. That it is stated that this claim is not maintainable against the replying respondent before the Hon'ble Tribunal in as much as there has not been employer-employee relationship in any manner between the workmen and the management/replying respondent. The workmen were the employee/workers of the concerned contractor and they were working under the direct control and supervision of the contractor. The replying respondent at no point of time employed the workman nor was they paid the wages by the management /replying respondent. The contractor employs his workmen for doing the particular job and payment is made by the contractor to its workmen. Accordingly, the payment towards the specific job entrusted to the contractor was made to the contractor, who had employed the workmen for the same and paid the wages as agreed between the workmen and contractor.
3. That this Hon'ble Tribunal does not have jurisdiction to adjudicate the dispute between the parties i.e. the workmen and the replying respondent for want of employee-employer relationship between the workmen and the management/replying respondent.
4. That there has not been any policy of the department to regularize the workmen of the contractor and in absence of the policy or the scheme for regularization /reinstatement of such contractor /workers in the department , the workmen cannot claim reinstatement or regularization.
5. That the reference before this Hon'ble Tribunal is bad and as a result of non application of mind by the competent authority in a much a it failed to take into account that there was no employer-employee relationship between the replying respondent and the workmen /claimants . Therefore, the reference is liable to be returned without entering into the same.

PARAWISE REPLY :

- 1&2. That the contents of corresponding paras to the extent of being matter of record, need no reply. It is submitted that the respondent No.1 has given contract to M/s. HBS Enterprises i.e. the respondent No.2 herein, for providing security services after inviting tenders. The workmen for providing security to the respondent No. 1 institution were engaged by the said contractor. Hence, the question of their regularization /absorption under the respondent no.1 does not arise. It is wrong to say that the workmen were engaged by the replying respondent/management through the fake contractor i.e. Sh. Sunil Kumar of M/s. HBS Enterprises. A copy of the contract entered into between the respondent No.1 and respondent No.2 and a copy of letter dated 22.012.2003 from the respondent No.2 respondent no.1 in this regard are annexed hereto as Annexure -R-1 and Annexure -R-2 respectively.
3. That the contents of the corresponding para to the extent of being matter of record, need no reply. However, it is submitted that the workmen were engaged directly by the contractor for time bound job. It is further submitted that the contractor was directly responsible for the job for the contractual period as provided in the contract agreement and the workmen were under direct control and supervision of the respondent No.2 and the wages for the work done by the workmen were also being paid directly by the contractor. The respondent No.1 has nothing to do with the workmen regarding their employment and payment of the wages . it is further submitted that the workmen had never worked under the direct control and supervision of the replying management and there had never been any employer-employee relationship between the replying management and the workmen.
4. That the content of the corresponding para, except those being matter of record, are wrong , misleading and misconceived and hence vehemently denied. It is submitted that the workmen were never prompt and vigilant towards their duty and the contractor was informed by the replying management time and again. It is further submitted that the placement of duty was given to the contractor to provide security as per requirement of the respondent No.1 institution.
5. That in reply to the averments in the corresponding para, it is submitted that the contractor was paid lump sum consolidated amount on monthly basis as per the terms of the agreement for disbursement to Security Guard/Supervisor and as per agreement clause they have to perform 8 hour duty. It is submitted that if at all the workmen had any kind of grievance, including lesser wages, they being the employees of the contractor, the replying respondent cannot be held responsible therefore. It is patently wrong and vehemently denied that there has been any regular nature of work which was done by the workmen or the workmen have any legal right to claim regularization for the same. It is further submitted that the present reference before this Hon'ble Tribunal by Government of India, Ministry of Labour/Shram Mantralaya, New Delhi is bad and as a result of non application of mind by the competent authority in as much as its failed to take into account that there was no employer-employee relationship between the replying respondent and the workmen /claimants. Therefore, the reference is liable to be returned without entering into the same.
6. That the content of the corresponding para, except those being matter of record, are wrong, misleading and misconceived and hence vehemently denied. It is submitted that the aforesaid contractor is appointing/ terminating authority in respect of security guards/supervisor and the replying respondent had not appointed/

terminated the services of any workmen, nor has made the payment to the workmen nor has controlled them. Besides, the replying respondent has made the payment in terms of the agreement and also as per the minimum wages, question of violation of any provision of law and /or act does not arise. It is further wrong to say that the workmen are entitled for any relief from the replying respondent. It is further submitted that the contract has been terminated w.e.f 30.11.2003. Hence, the liabilities of paying salary to the workmen does not rest with the replying respondent. Besides, in view of the letter dated 22.12.2003 (Annexure –R-2) as well , it is ample evident that the replying respondents is not liable to make any payment or the workmen have any legal rights to seek regularization, pay scale or any service benefits from the replying management.

PRAYER

In view of the facts and submissions, it is mot respectfully submitted that the claim is devoid of merits and deserve NIL award in the matter.

Rejoinder on behalf of workmen to the Written Statement filed by Management No. 2. Wherein they stated as follows:-

REPLY TO THE PRELIMINARY OBJECTIONS:-

Most Respectfully Showeth:-

1&2 Contents of para 1&2 are factually incorrect and hence denied. It is submitted that the contract in this case was sham and camouflage as the contractor does not possess of valid license under the Contract Labour (Regulation & Abolition)Act.

3&4. Contents of para -.. 3& 4 are also factually incorrect, hence denied. It is submitted that the workman were engaged for the work of the management No.1 and as the contract was sham and camouflage, they are the direct employee of the management No.1.

REJOINDER ON MERITS:-

(1) (2) (3) Contents of paras 1 to 3 are wrong, misconceived and ill-conceived , hence denied. Contents of the correspondence paras of the statement of Claim are reiterated and reaffirmed.

(4) & (5) The contents of para -4 & 5 need no reply being the of record.

(6) Contents of Para -6 are wrong, hence denied. Contents of the corresponding para of the Statement of Claim are reiterated and reaffirmed.

Rejoinder on behalf of workmen to the written statement of management No. 1. Wherein they stated as follows:-

1. That the preliminary objection of the management in this Para that the claim before this Hon'ble Tribunal is made on the basis of misconception of law etc. is wrong , hence denied. It is submitted that the reference has been properly referred by the appropriate government before this Hon'ble Tribunal.
2. That the preliminary objection of the management in this Para that this claim is not maintainable against the replying respondent before this Hon'ble Tribunal in as much as there has not been employer-employee relationship etc. is wrong, hence denied. It is submitted that the contract is sham and camouflage and not in accordance with the provisions of Contract Labour (Regulation & Abolition) Act 1970 so the relationship is very much exists between the management No.1 and workmen. It is further submitted that the workman were performing their duties directly under the control and supervision of management No.1.
3. That the preliminary objection of the management in this Para that this Hon'ble Tribunal does not have jurisdiction to adjudicate the dispute between the parties etc. is wrong, hence denied. It is submitted that this Hon'ble Tribunal have its jurisdiction to adjudicate this dispute that there is as relationship between employees and employer.
4. That the preliminary objection of the Management in this Para that there has not been any policy of the department to regularize the workmen of the contractor etc. is also wrong, hence denied. It is submitted that these workman were employed through the so called contractor only with a view to deny the regular and permanent status of workmen and this type of activities of the management is an unfair practices as per the schedule u/s 2(ra) of the I.D. Act 1947. It is further submitted that this Hon'ble Tribunal with a view to set aside the unfair labour practice should direct the management No.1 to regularize and /absorb the workmen and also direct the management No.1 to reinstate the workmen as violated the provision of Sec. 33 of ID Act 1947.

5. That the preliminary objection of the management in this Para that the reference before this Hon'ble Tribunal is bad and as a result of non application of mind by the competent authority is also wrong hence denied. It is submitted that the reference dated 07.05.2003 referred by the ministry of Labour, Govt. of India, New Delhi is proper and accordance with the law.

REJOINDER OF MERITS

1-6

That written statement of the management in these para are factually incorrect and not in accordance with the law, hence denied. The respective paras of the statement of claim are restated and reaffirmed.

Out of the pleadings of parties following issue have been framed by my Ld. Predecessor on 30.08.2007.

- (i) Whether there exists an employer and employee relationship between the workmen and the management No.1 and the claim is not maintainable against him? Onus on workmen.
- (ii) As per terms of reference?

On 29.12.2008 workmen filed their affidavit in their evidence in support of their case mentioned in Claim statement. Contents of affidavit are as follows:-

1. That I am one of the workmen and group leader of the workmen connected with the dispute and I know the facts of the case so I am competent to shower this affidavit on behalf of the workmen.
2. That more than 60 persons including ourselves had been performing their duties of Security Guard for the security and watch and ward of the building of the M/s. Smt. Suchita Kripalani Hospital & Medical College (Lady Harding) New Delhi then the management annoyed and terminated services w.e.f. 01.12.2003 without any enquiry or one month notice or notice pay and compensation and without taking prior permission before this Hon'ble Authority as required u/s 33 of ID Act so the termination of all these workmen are honest and they have to be treated as on duty.
3. After termination of our services the other set of workmen were employed through fake contractor on the work on which we had been performing our duties up to the date of termination.
4. That the work of maintenance and watch the ward of the building of M/s. Smt. Suchita Kripalani Hospital & Medical College (Lady Harding) New Delhi is perennial nature of job hence the management can not employ other set of workmen on the said work through the fake contractor i.e. M/s HBS Enterprise.
5. That before raising this dispute we filed the Writ-Petition No. CWP-1521 through Bhartiya Shramik Union and Hon'ble High Court on 5th April 2000 have directed the management not to substitute contract workers. Finally Hon'ble High Court disposed off the sad writ-petition on 27.11.01 with a direction that the workmen can approach the appropriate authority for claiming their right for regularization. The document filed on behalf of workman before this Hon'ble Tribunal has already admitted by the Officers of the management.
6. That the workmen connected with the dispute had been performing their duties till their termination under the direct control and supervision of the officers of the management of M/s. Suchita Kripalani Hospital & Medical College (Lady Harding) New Delhi and the contractor was only functioning as a cashier of the management and even the workmen were paid less than the minimum wages as fixed by Ministry of Labour, Govt. of India from time and against this, the dispute is pending before the Hon'ble High Court against order of authority appointed under Minimum Wages Act, 1948.
7. Tht the function of the contractor in this case is as an agent of the management of M/s. Suchita Kripalani Hospital & Medical College (Lady Harding) New Delhi.
8. That the regular workers are doing the work of watch and ward and the Chawkidars have been getting the wage in time scale with all allowances including increment but we have been denied the same benefits.
9. That in the night we had been performing the duties of watch and ward to maintain peace and decorum in the hospital along with directly employed workmen like Sh. Chran Singh and Shri Narendra Gautam etc.
10. Tht neither the management of M/s. Suchita Kripalani Hospital & Medical College (Lady Harding) New Delhi is registered as principal employer nor the contractor as referred hereinabove was licensed contractor so the workmen are the direct employee of the management No.1.
11. That as per the recent judgment of Hon'ble Supreme Court in the matter of Secretary, Haryana State Electricity Board Vs. Suresh & Others etc. (reported in 1999 LAB IC 1326) held that the employees who have worked for more than 240 days cannot therefore be denied absorption as direct employees when the Board neither registered as principal employer nor the contractors were licensed and their services cannot be terminated without flowing provision of I.D Act, 1947.

12. That these workmen are also entitled to the same wages as their duty, duty hours, nature of work and responsibilities are the same that of the workmen directly employed by the management so in this respect the management also violated the provision of Contract Labour (Regulation & Abolition)Act 1970 on this matter.
13. That the workmen were performing their duties within the premises of the Management of M/s. Suchita Kripalani Hospital & Medical College (Lady Harding) New Delhi .
14. 15. That some of the documents issued by the officers of the M/s. Suchita Kripalani Hospital & Medical College (Lady Harding) New Delhi are annexed collectively which proves that the workmen connected with the dispute had been performing their duties directly under the supervision and control of the officers of the management No.1.
15. That the office of the management of M/s. Suchita Kripalani Hospital & Medical College (Lady Harding) New Delhi were also taking disciplinary action against the workmen connected with the dispute and some of the papers are also annexed which documents were admitted by the management himself which confirms that the workmen had been performing their duties directly under the direct control and supervision of the management.
16. That the contract was/is sham and camouflage so the workmen connected with this dispute have to be treated as direct employees of the management in Group- D category and entitled all the benefits from the date of their initial employment.

Workman tendered his affidavit on 18.08.2010 and was cross-examined on same day by Respondent No.2.

His examination in chief and cross-examination are as follows:-

I tender in evidence my affidavit which is on my behalf as well as on behalf of the other workmen of this case. The affidavit has been signed by me at points A&B on the affidavit which is exhibit WW1/A . The documents referred to in para 16 of my affidavit which have been admitted by the other parte are collectively exhibit WW1/1 on pages 79 to 97 of the court file even Nos. such as 80, 82,84,86,88,90,92,94& 96 are not marked. My affidavit may be read in evidence for myself as well as the other 22 workmen.

XXX by Sh. Naresh Kumar Advocate A/R of the management No.2, HBS Enterprises, RZ-F 776/31, Raj Nagar , Part-II Palam Colony, New Delhi.

We have no connection with management No.2 HBS Enterprises, RZ-F -776/31 , Raj Nagar, Part-II , Palam Colony , New Delhi. We were never be employees M/s. HBS Enterprises Mgt. No. 2 I have no knowledge of letter dated 30.10.2003 written by HBS Enterprises to the principal & M.S of L.H.M.C & Smt. S.K. Hospital New Delhi. I have also no knowledge nor any concern that the contract between the HBC Enterprises and the Hospital has seized with effect from 30.11.2003. We are not prepared to accept the indulgence of HBS Enterprises ever if they are ready to engage us in the other Industrial Unit. It is correct that we do not look for any belief from mgt. No.2 HBS Enterprises.

On 5.10.2010 Sh. M.A Khan, one of the workman was cross-examined by Respondent No. 1.

His cross- examination is as follows:-

XXX By Sh. A.S Singh , A/R for Management No.1

No appointment letter was ever issued to me by management No.1 Smt. Suchita Kripalani Hospital & Medical College. I was never sponsored by the Employment Exchange for employment with management no.1. No advertisement was ever issued by the management for employment of persons nor I applied against any such advertisement . The management No.1 never issued any salary payment documents like salary slip etc. to me and others. It is wrong to suggest that I was appointed by management No.2 M/s. HBS Enterprise and they only paid us the salary et. And management No.1 has no concern with my employment. No written authority letter has been given to me by the other workmen to give evidence on their behalf and some of them namely, Sh. Ram Asray son of Sh. Sukh Raj, Rahul Rai son of Sh. Mauji Lal Rai, Shivji Singh son of Sh. Jang Bahadur Singh, Murari Kumar son of Sh. Gorakh Singh, Subhadra Thakur son of Sh. Upinder Thakur, Lakshman Singh son of Sh. Ram Shankar Singh, Ram Nath Pd son of Sh. Brinda Lal Pd. Are even present today in the court. (These workmen have also heard this statement of workman M.A. Khan and they say that whatsoever Mr. Khan is stating is acceptable to them also.) All these workers had not joined the employment on the same day but had joined on different dated. It is incorrect to suggest that management no.1 got the jobs of 'taking care of queues of patients', 'to take care of patients and the building' from outsource agency i.e. management No. 2 and management No.2 had employed all of us and the workmen have no direct link with management No1. We had filed writ in the Delhi High Court but they advised us to move the appropriate forum. It is correct that an interim order was passed by Delhi High Court on 17.07.2000 in writ No. 2623 of 2000 and order dated 5.04.2000 in writ No. 1521 of 2000. I cannot say if by virtue of the said order contract dated 30.06.1999 with management no.2 continued beyond one year. It is incorrect to suggest that management No.2 had made the payment due to us. Volunteered, that we have no connection with management No. 2. It is incorrect to suggest that management No.1 has no post of security guard. I cannot say if management No.1 I has no policy of regularization of the contract

labour. I cannot comment if management No.2 only was responsible to management No.1 for the jobs assigned to them by management No.1. it is incorrect to suggest that myself or any other workman ever worked with management no. 1 for 240 days or even for one day. It is wrong to suggest that I have no authorization to speak on behalf of other workmen. It is wrong to suggest that management No.2 only had control on me and other workmen. I cannot give the minute details of the families of other workmen of this case. After the year 2000 I do not know what the other workmen are doing since then. It is wrong to suggest that we have no case.

Management in its support filed affidavit of Sh. Prem Chand, S/O Late SH. Kanhaiya Lal, Administrative Officer Manager. Wherein he stated as follows:-

1. I say that I am well conversant with the facts of the case and authorized and competent to lead evidence on behalf of the Management /Respondent and file the present affidavit by way of evidence. The same is exhibited as Exhibit -M1W1 /A.
2. I say that that management has filed detailed reply to the claim petition and the contents of the same are true and correct. The reply of the Management to the claim petition is exhibited as Exhibit M1W1/B.
3. I say that the claim before this Hon'ble Tribunal is made on the basis of misconception of law by the workmen and also on misleading facts.
4. I say that the claim is not maintainable against the replying respondent before this Hon'ble Tribunal in as much as there has not been employer -employee relationship in any manner between the workmen and the management No.1 , the S.K. Hospital & Medical College. The workmen were the employee/workers of the concerned contractor and they were working under the direct control and supervision of the contractor. The management No1, the S.K. Hospital & Medical College, at no point of time employed the workman nor they the wages were paid by the Management No.1, the S.K. Hospital & Medical College to the workmen herein. I further say that the contractor employs his workmen for doing the particular job and payment is made by the contractor to the workmen. Accordingly, the payment towards the specific job entrusted to the contractor was made to the contractor, who had employed the workmen for the same and paid the wages as agreed between the workmen and the contractor.
5. I say that this Hon'ble Tribunal does not have jurisdiction to adjudicate the dispute between the parties i.e. the workmen and the management No.1, the S.K. Hospital & Medical College, for want of employee-employer relationship between the workmen and the management No.1, the S.K. Hospital & Medical College.
6. I say that there has not been any policy of the Management No.1, the S.K. Hospital & Medical College, to regularize the workmen of the contractor and in absence of the policy or the scheme for regularization /reinstatement of such contractor/workers in the department, the workmen cannot claim reinstatement or regularization.
7. I say that the reference before this Hon'ble Tribunal is bad and as a result of non application of mind by the competent authority in as much as it failed to take into account that there was no employer-employee relationship between the Management No.1, S.K. Hospital & Medical College, and the workmen /claimants. Therefore , the reference is liable to be returned without entering into the same.
8. I say that the Management No.1, the S.K. Hospital & Medical College, has given contract to M/s. HBS Enterprises i.e. the Management No.2 herein, for providing security series after inviting tenders. The workmen for providing security to the management No.1, the S.K. Hospital & Medical College, were engaged by the said contractor. Hence, the question of their regularization/absorption under the Management No.1., the S.K. Hospital & Medical College, does not arise. I further say that the workmen were never engaged by the Management No.1, the S.K. Hospital & Medical College, through the fake contractor i.e. Shri. Sunil Kumar of M/s. HBS Enterprises, A copy of the contract entered into between the Management No.1, the S.K. Hospital & Medical College, and Management No.2 is exhibit as **Exhibit-M1W1/C** and a copy of letter dated 22.12.2003 from the Management No.2 to Management No.1, the S.K. Hospital & Medical College,. In this regard is exhibited as **Exhibit-M1W1/D**.
9. I say that the workmen were engaged directly by the contractor for time bound job. I further say that the contractor was directly responsible for the job for the contractual period as provided in the contract agreement and the workmen were under direct control and supervision of the Management No.2 and the wages for the work done by the workmen were also being paid directly by the contractor. The Management No.1, the S.K. Hospital & Medical College, has nothing to do with the workmen regarding their employment and payment of the wages . I further say that the workmen had never worked under the direct control and supervision of the Management No.1, the S.K. Hospital & Medical College, and there had never been any employer-employee relationship between the Management No.1, the S.K. Hospital & Medical College , and the workmen.

10. I say that the Management No.2 has filed a suit for recovery against the Management No.1, the S.K. Hospital & Medical College, for payment of his dues towards providing security in the complex of hospital before the District Court, Tis Hazari Court, New Delhi and the same was dismissed by Shri. Umed Singh Grewal, Id. ADJ-02 (North/Delhi) vide his judgement dated 03.02.2010. Copy of the same is exhibited as Exhibit – M1W1/E . The claim of the workmen regarding the fake contract is clearly falsified from the aforesaid judgement of the Id. ADJ.
11. I say that the workmen were never prompt and vigilant toward their duty and the contractor was informed by the Management No.1, the S.K. Hospital & Medical College, time and again. The placement of duty was given to the contractor to provide security as per requirement of the Management No.1, the S.K. Hospital & Medical College.
12. I say that the contractor was paid lump sum consolidation amount on monthly basis as per the terms of the agreement for disbursement to Security Guard/Supervisor and as per agreement clause they have to perform 8 hours duty. I further say that if at all the workmen has any kind of grievance, including lesser wages, they being the employees of the contractor, the Management No.1, the S.K. Hospital & Medical College, cannot be held responsible therefore. There has not been any regular nature of work which was done by the workmen or workmen have any legal right to claim regularization for the same.
13. I say that contract of the Management No.2 has been terminated w.e.f. 30.11.2003 . Hence, the liabilities of paying salary to the workmen do not rest with the Management No.1, the S.K. Hospital & Medical College. Besides, in view of the letter dated 22.10.2003 (Exhibit –M1W1/D) as well, it is amply evident that the Management No.1, the S.K. Hospital & Medical , is not liable to make any payment or the workmen have any legal rights to seek regularization, pay scale, or any service benefits from the Management No.1, the S.K. Hospital and Medical College.

His examination-in-chief and cross-examination is as follows:-

I tender in evidence my affidavit Ex. M1W1/A which bears my signature at point 'A' and 'B' I rely upon my documents Ex. M1/W1/B, Ex. M1 W1/C, Ex. M1W1/D and Ex. M1W1/E.

XXXX by Sh. B.K. Prasad , A/R for the workman.

It is correct that the workman connected with the dispute were performing the duties of water and ward to the management No.1 volunteered, through contractor.

Q. Whether documents admitted at page 81 to 85 Ex. WW/M1?

Ans. Yes.

Q. Whether photo copy of order dt 27.11.2001 relating writ-petition No1521/2000 Bhatiya General Majdoor Congress Vs. Union of India and ors. is on record. Have you any knowledge of it.

Ans. No.

Q. Whether workman filed writ-petition in Hon'ble Delhi High Court where Hon'ble High Court directed to file petition in appropriate authority as the judgement of Hon'ble Supreme Court.

Ans. I do not know.

Q. Whether agreement Ex. MW1/C is between department and contractor ? And not between workman.

A. Yes.

Q. How many persons have been taken through contractor?

Ans. There were 36 security guards and six security supervisors.

Q. Whether 23 (Twenty Workmen) of the instant ID. were included in aforesaid 42 persons?

Ans. I do not know.

Q. Whether you got registration from labour department to get Labour appointed through contractor?

Ans. I do not know.

Q. Whether contractor has such license?

Ans. I do not know.

Q. Whether Contracts of para 2 of W.S. are correct?

Ans. Yes.

It is incorrect to suggest that all the workmen were in direct supervision of respondent No.1.

Q. Whether during pending of I.D 62/200 all workmen have been terminated without prior permission of the Tribunal?

Ans. I do not know because workmen were not our employees.

Q. Whether security work is of permanent nature?

Ans. No.

Q. How many workers are working ?

Ans. I do not know.

Q. How many regular security guards?

Ans. There is no post of security guard.

Q. How many Chowkidars are there?

Ans. Approximately forty.

Q. Whether work of security guards and chowkidars is same?

Ans. Both works are different.

Q. Whether security guards are required to keep Gun with them?

Ans. No.

Q. Payscale of Group -D employee since 1996 to 2003.

Ans. I do not know.

It is correct that pay scale of central Govt. is applicable.

It is incorrect to suggest that I took workmen through contractor so that they could not get full pay and could not be regularized.

Q. Whether suit No. 163/2006 Sunil Kumar proprietor M/s. HBS Enterprises Vs. Union of India and ors. has been filed by workman?

Ans. No.

It is incorrect to suggest that I am deposing falsely.

Workmen /claimants filed written submission in which they mentioned as follows:-

Respectfully Showeth:

1. That the appropriate Government in the Ministry of Labour, government of India, New Delhi has referred the dispute to this Hon'ble Tribunal for adjudication vide its order No.L-42012/212/2002-IR(CM-II) dated 07.05.2003 with the following terms:

SCHEDULE

“Whether the demand of the Bhartiya Shramik Union in relation to regularization/absorption of the services of 23 contract labour (list enclosed) employed through Contractor M/s. HBS Enterprises worked as Security Guards in the establishment of Smt. Sucheta Kriplani Hospital and Lady Harding Medical College, New Delhi is legal and justified? If not to what relief they are entitled to?”

2. That the details of workmen are annexed with the Annexure listed with the schedule.
3. That more than 60 persons employed in different Contract Labour only 23 workmen connected with the dispute has raised the dispute for grant of regularization/absorption of the services listed in the reference order in the establishment of M/s. Smt. Sucheta Kriplani Hospital & Medical College, Lady Harding. The workmen have been performing their duties w.e.f. 1st July, 1999 through the fake contractor as the contract was sham and camouflage. All the workmen were performing their duty as Security Guard for the security and watching of the Building of Smt. Sucheta Kriplani Hospital, New Delhi.
4. That the work on which the workmen have been performing their duties is a perennial nature of job so the management cannot be engaged through contractor.

5. That the Management directly controlling the services of 23 workmen and they were deprived of their legal benefits. It is submitted that the regular workmen getting all the benefits as Group – D wages along with all allowances and increment revised from time to time but the Management of Smt. Sucheta Kriplani Hospital & Medical College (Lady Harding) with a view to exploit the poor workmen so indulged in unfair labour practice.
6. That during the pendency of the dispute the services of the workmen were terminated without taking prior permission before this Hon'ble CGIT-cum-Labour Court as required under Section 33 of I.D. Act so the termination of all these workmen are honest and they have to be treated as on duty against the illegal termination and against the said termination the separate complaint is pending before this Hon'ble CGIT-cum-Labour Court.
7. That the workmen have completed more than 240 days continuous service in each of the calendar year so they acquire the status of a regular workman of the management.
8. That the contractors neither has license for engagement of contract labourers nor the management being principal employer procured registration as required under the Contract Labour (Regulation and Abolition) Act, 1970 to engage contract labourers through Contractor(s) thereby violated the provisions of the said Act. So the workmen are entitled regular status and absorbed being direct employees of the management of Smt. Sucheta Kriplani Hospital so get all benefits as that of regular and permanent workmen directly employed by the management as per Rules 25(v) (a) of Contract Labour (Regulation and Abolition) Central Rules, 1971. It is also submitted that there was no genuine contract. Hence the workmen on completion of 240 days are entitled to be absorbed with the management.
9. That the workmen are performing the duty on a permanent nature of job so all are direct employees of the management, if the veil is lifted by this Hon'ble Tribunal will come to know how the management is committing unfair labour practice and run counter to the provisions of Contract Labour (Regulation and Abolition) Act, 1970. Therefore, they may be absorbed being direct employees of management.
10. That all the workmen who are working as unskilled, connected with the dispute working on unskilled category are entitled for their regularization/absorption without any academic and technical qualification as they acquire sufficient experience for working in the category of Security Guard for the security and watching the building owned by the management.
11. That it is proved by the evidence of Shri M.A. Khan one of the workmen and group leader of the other workmen connected with the dispute. The details are mentioned in the said Affidavit which is exhibit WW1/A.

All the workmen are not required to appear in witness box.

As per rule 22 of the Industrial Disputes (Central) Rules 1957 – there is no procedure to decide reference on merits even the workmen fails to put in appearance. The similar provisions mentioned in Industrial Disputes (Punjab) 1958 the Hon'ble Punjab & Haryana High Court in the matter M/s. Norton Engineering Works, Petitioner Vs. presiding Officer, Labour Court & Others – Respondents (1997 LAB.IC 2254 has held in para 5 & 7 that it is not necessary that the workmen appear into the witness box. The Hon'ble High Court of Delhi has held on 22.08.2006 in Writ Petition (C) No.18559/2004 titled Shakeel Ahmed Vs. New Delhi Municipal Council that the operative para is reproduced as under:

“Reference is made to the judgment 2005(2) SCC 217 at p.222 to plead that no delegation can be made to appear as a witness and that whether the contested is a question of fact. I have carefully gone through the pleads raised by the respondent. The fact that the workman pressed his claim is very clear from the common statement of claim as well as common conduct of the proceedings and common representation before the Labour Court.

In view of this patent error in the impugned order dated 16.11.2004 and Award dated 28.02.2004 are patent to perverse as it is more than evident that the present petitioner also contested/preferred his claim as well as Shri Ramakant Rai did. Since there is no distinguishing feature in the case of the present petitioner and that of Ramakant Rai, there is no way how the present petitioner's claim can be decided differently from that of Ramakant Rai.

The present writ petition is accordingly allowed and it is held that the benefits given to Ramakant Rai in the main Award dated 28.02.2004 be given to the present petitioner Shakeel Ahmed. This will not, however affect merit of the writ petition being W.P.(C) No.2273/2005 of the management challenging the Award.”

12. That the evidence of Shri M.A. Khan, WW1 is applicable to all the workmen connected with the dispute so it is proved by the workmen that the work is a perennial in nature and appointing on contract basis is camouflage, unfair and unjust. It is also proved by the Management witness MW1, the case of workmen.

13. That the duties have been performed by the workmen are of perennial in nature and the said jobs cannot be awarded on contract basis through Contractor.
14. That the facts of the case the workmen were performing their duties under the control and supervision of the management being the work of a perennial in nature, the relation exists between the workmen and the management so they have to be treated as direct employees of the Management of Smt. Sucheta Kriplani Hospital.
15. That the Constitutional Bench of the Hon'ble Supreme Court has settled the relationship between the workmen and the management in the matter of **Steel Authority of India & Ors. Vs. National Union Waterfront Workers & Ors. (2001) 7 SCC 1**. The relevant para of the said judgment i.e. 125(5) and (6) settled the proposition of law between the principal employer and the contract labour if the Contract Labour who was employed in a camouflage manner then they are treated the direct employee of the principal employer, and the same is reproduced as under:

“125(5) On issuance of prohibition notification under Section 10(1) of the CLRS Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 109(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

16. That the Management in this case did not obtain the registration certificate u/s 7 and the so-called Contractor was not licensed contractor under Section 12 of the Contract Labour (Regulation & Abolition) Act, 1970, so the ***contract was mere sham, camouflage and illegal***. Therefore, the workman has to be treated as direct employees of the management of Hospital. In another Judgment of Hon'ble Supreme Court in the matter of Secretary, Haryana State Electricity Board and Suresh & Others (1999-I-LLJ-1086) has dealt the case of Dinanath & Ors. Vs. National Fertilizers Ltd. & Ors. (1992-I-LLJ-289) has held that if the principal employer did not have the registration etc. between **then the linkage between the contractor and the employees stood snapped and direct relationship stood restored the principal employer and the contract labour as its employees**. The operative portion of para 18 of Secretary, Haryana State Electricity Board and Suresh & Others (1999-I-LLJ-1086).

“18. Reliance on the decision in the case of Dinanath & Ors. V. National Fertilizers Ltd. & Ors. (1992 – I – LLJ-289) (SC) in support of the Board’s contention, however, stands diluted by reasons of the decisions of this court in Gujarat Electricity Board Vs. Hind Mazdoor Sabha & Ors. (1995-II-LLJ-790) (SC) and Air India Statutory Corporation etc. Vs. United Labor Union & Ors. Etc. (supra). The ratio as has been decided in Air India’s case appears to have softened the edges of Dinanath’s ratio. While dealing with this issue in Air India’s case (supra), this Court has, as a matter of fact taken note of more or less the entire catena of cases pertaining to contract labour and we do thus feel it wholly unnecessary to deal with the same in extensor excepting however recording some observations of this Court in Air India’s case (supra) as below:

“In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contract and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant.”

17. That in the said judgment of Hon'ble Supreme Court in the matter of **Secretary, Haryana State Electricity Board and Suresh & others (1999-I-LLJ-1086)** has also held that **if the so called contractor was mere name lender, who procured labour for appellant Board as broker, Board was not principal employer, so called**

contract was mere camouflage which concealed real relationship of the employer employees. The workmen also relied the relevant para 8, 17 and 19 of the said judgment.

18. That the Hon'ble Supreme Court in Hussainbhai, Calicut and Alath Factory Thoshilali Union, Calicut and others [1978-II-LLJ-397] has held that Contractor in this case is only supplying the labour for performing the work of principal employer, so the workmen have to be treated as direct employees of the principal employer. The workmen relied on para 5, 6 and 7 of the said judgment.
19. That on the question of control and supervision etc. the Hon'ble Supreme Court in the latest judgment in the matter of M/s. Bharat Heavy Electricals Ltd. (Appellant) Vs. State of U.P. and Others (Respondents) 2003 Lab IC 2630 have held in para 11, 12, 13 and 14.
20. That the recent Judgment of Hon'ble Supreme Court dated 26th September, 2006 in the matter of Steel Authority of India Ltd. Vs. Union of India &Ors. [2006 VIII AD(S.C.) 381 has held that Industrial Court has only the jurisdiction to decide whether the contract was really a camouflage or a sham one as decided by the Constitution Bench of Hon'ble Supreme Court of India in the matter of Steel Authority of India Ltd. And Others Vs. national Union Waterfront Workers and Others [(2001)7 SCC 1] is still in the field. The workman relied on para 9 and 10 of the said judgment.
21. That as per the facts of this case, evidence adduced by MW1, it is proved that in this case the contract was not genuine, as camouflage to evade compliance with the beneficial legislation like the management in this dispute, is not a principal employer, because there was no genuine contract system, as they have not got registered and the contractor was not a licensed contractor, so the workmen have to be treated as direct employees of the Management of Smt. Sucheta Kriplani Hospital.

In view of the above, the contract was sham, camouflage and the job of Watch & Ward/Chowkidar is of perennial in nature and they have direct relationship of employer and employees between the Management of Smt. Sucheta Kriplani Hospital and their workmen connected with the dispute.

PRAYER

This Hon'ble Tribunal may kindly Award to issue the directions to the Management of Smt. Sucheta Kriplani Hospital & Medical College (Lady Harding) to regularize/absorb of the services of 23 Contract Labour listed with the reference order as the contract was sham and camouflage and also direct to pay the similar wages from the date of their initial employment of a Group – D employee with all consequential benefits.

Respondent No. 1 filed its written arguments . Where-in it mentioned as follows:-

1. That the claim before the Hon'ble Tribunal is made on the basis of misconception of law by the workmen and also on misleading facts.
2. That it is stated that this claim is not maintainable against the replying respondent before this Hon'ble Tribunal in as much as there has not been employer-employee relationship in any manner between the workmen and the management /replying respondent. The workmen were the employee/workers of the concerned contractor i.e. of Respondent No.2 and they were working under the direct control and supervision of the contractor. The replying respondent at no point of time employed the workman nor was they paid the wages by the management/relying respondent. The contractor employs his workmen for doing the particular job and payment is made by the contractor to its workmen. Accordingly, the payment towards the specific job entrance entrusted to the contractor was made to the contractor, who had employed the workmen for the same and paid the wages as agreed between the workmen and the contractor.
3. That this Hon'ble Tribunal does not have jurisdiction to adjudicate the dispute between the parties i.e. the workmen and the replying respondents for want of employee-employer relationship between the workmen and the management/ replying Respondent No.1.
4. That there has not been any policy of the department to regularize the workmen of the contractor and in absence of the policy or the scheme for regularization /reinstatement of such contractor/workers in the department, the workmen cannot claim reinstatement or regularization.
5. That the reference before this Hon'ble Tribunal is bad and as a result of non application of mind by the competent authority in as much as it failed to take into account that there was no employer-employee relationship between the replying Respondent No. 1 and the workmen/claimants. Therefore, the reference is liable to be returned without entering into the same.
6. That it is submitted that the Respondent No.1 has given contract to M/s. HBS Enterprises owned by Mr. Sunil Kumar i.e. the Respondent No. 2 herein, for providing security services after inviting tenders. The workmen for providing security to the respondent No.1 institution were engaged by the said contractor. Hence, the question of their regularization/ absorption under the respondent No.1 does not arise. A copy of contract entered into between the respondent No.1 and respondent No.2 and a copy of letter dated 22.12.2003 from the respondent No.2 to

respondent No.1 in this regard have been filed before this Hon'ble Tribunal and are exhibits MW1/C and MW1/D respectively on the judicial record.

7. That it is submitted that the workmen were engaged directly by the contractor for time bound job. It is further submitted that the contractor was directly responsible for the job for the contractual period as provided in the contract agreement and the workmen were under direct control and supervision of the respondent No.2 and the wages for the work done by the workmen were also being paid directly by the contractor. The respondent No.1 has nothing to do with the workmen regarding their employment and payment of the wages. It is further submitted that the workmen had never worked under the direct control and supervision of the replying management and there had never been any employer- employee relationship between the replying management and the workmen.
8. It is submitted that the management no.2 had filed the suit for recovery against the management no.1 before the A.D. j-II , Tis Hazari Court, Delhi for recovery of the dues in terms of the contract, which was dismissed vide judgment dated 03.02.2010 (Exhibit MW1/E).
9. That it is submitted that the workmen were never prompt and vigilant towards their duty and the contractor was informed by the replying management time and again. It is further submitted that the placement of duty was given to the contractor to provide security as per requirement of the respondent No.1 institution.
10. That it is submitted that the contractor was paid lump sum consolidated amount on monthly basis as per the terms of the agreement and the contractor paid the salary to Security Guard/supervisor and as per agreement clause they have to perform 8 hours duty. It is submitted that if at all the workmen has any kind of grievance, including lesser wages , they being the employees of the contractor , the replying respondent cannot be held responsible therefore. The claimants have wrongly claimed that there has been any regular nature of work which was done by the workmen or the workmen have any legal right to claim regularization for the same.
11. That it is submitted that the aforesaid contractor is appointing/terminating authority in respect of security guards/supervisor and the replying respondent has not appointed /terminated the services of any workmen, nor has made the payment to the workmen nor has controlled them. Besides, the replying respondent has made the payment in terms of the agreement and also as per the minimum wages, question of violation of any provision of law and /or act does not arise. It is further submitted that the contract has been terminated w.e.f. 30.11.2003. Hence, the liabilities of paying salary to the workmen does not rest with the replying respondent. Besides, in view of the letter dated 22.12.2003 as well, it is ample evident that the replying respondents is not liable to make any payment or the workmen have any legal rights to seek regularization, pay scale or any service benefits from the replying management.
12. Legal Submissions:-

That it is admitted case of the parties that workmen were contractual employee of the management no.2 i.e M/s. HBS Enterprises, Proprietor Sh. Sunil Kumar and the appointment and control upon the workmen was of the management no.2. and the management no.1 was required to pay the management no.2 as per the contract Exhibit- MW1/C. It is the settle law that a contract employee is not entitled for regularization. No one can be given employment in the Government contrary to the constitutional scheme and the back door entry cannot be permitted to any person unless and until the person is appointed as per recruitment rules and scheme of the constitution where the employee appointment without following procedure laid down under Article 14, 16 and 309 of the Constitution of India they cannot be regularized in service. Reliance is placed upon the following judgments:-

Surendra Prasad Tewari Vs. U.P. Rajya Krishi Utpadan Mandi Parishad and Others reported as 2006 (7) SCC 684 paras 20 to 29 , 31 and 38.

Secretary , State of Karnataka Vs. Uma Devi (3) and others reported as 2006 (4) SCC 1 paras 2 to 6 , 11, 12, 13, 15,16,43, 44,45,46,47,49 and 54.

Post Master General, Calcutta Vs. Tuto Das reported as 2007 (5) SCC 317 paras 12 to 16, 19 and 20.

Indian Drug and Pharmaceutical Ltd. Vs. Workmen, Indian Drug and Pharmaceutical Ltd. reported as JT (2006) (10) SC 216 paras, 13,14,17,22,23,24,26 to 29, 33, 34, 37,38, 40, 46 and 47.

State of M.P. & Ors. Vs. Lalit Verma reported as AIR 2007 SC 528 paras 7, 9,11,13, 14 and 23.

Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Ors. reported as (2007) 6 SCC 207 paras 16, 17, 18 and 19.

13.In view of the factual and legal submissions made herein above it is in the interest of justice that this Hon'ble Tribunal may please to dismissed the claim petition filed by the workmen.

I have heard the oral and written arguments of Ld. A/R's for the parties and perused the pleadings and evidence of parties on record as well as principles laid down in the cited rulings.

Perusal of evidence on record shows that workmen were contractual employees of respondent no. 2.

Their contract was upto 30.11.2003. Prior to expiry of date of contract workmen raised their demand for their regularization through union in Labour Ministry on the basis of which reference has been sent to this tribunal for adjudication which has the questions of determination in its schedule.

Question of determination no. 1 is as follows:-

“Whether the demand of the Bhartiya Shramik Union in relation to regularization/absorption of the services of 23 contract labour (list enclosed) employed through contractor M/s. HBS Enterprises, worked as Security Guards in the establishment of Smt. Sucheta Kriplani Hospital and Lady Harding Medical College, New Delhi is legal and justified?”

Accordingly to its words burden of proof to prove it lies on workmen.

Workmen through their evidence could only alleged that they were contractual employees but their contract of employment was sham, camouflage and illegal. Hence workmen have to be treated as direct employees of the management of Hospital on this count they claimed regularization. When matter of their regularization was pending in this Tribunal they were terminated by the management of Hospital. According to them which could not be done except with the permission of this Court. They filed separate complaint U/s 33 –A I.D. Act against Hospital management & Ors. On the other Ld. Hospital management adduced its evidence to show that they were contractual employees. Their term of contract expired on 30.11.2003 so their services came to end due expiry of period of contract so no case of their regularization is made out because contract employee cannot claim regularization as per settled law. Ld. A/R's for the parties placed reliance on principles laid down in the cited rulings in their written arguments.

Evidence of workmen is not sufficient to prove that contract is sham and camouflage. Their services came to end due to expiry of period of contract. So they cannot be regularized in want of government policy.

Moreover in case of Summer Fields School Vs. Regional Provident Fund Commissioner 2016 L.L.R 451(Delhi High Court) his Lordship held that employees receiving wages from contractor not entitled to be employees of principles employer.

It is relevant to mention here that rulings cited on behalf of workmen are not applicable in the instant case due to distinguishable facts and workmen received their wages from contractor respondent No. 2.

In this back ground Question of Determination No.1 as well as issue no. 1 framed on 30.08.2007 is liable to be decided against workmen and in favour of Hospital Management no. 1. Which is accordingly decided.

Question of Determination No. 2 and issue no. 2 framed on 30.08.2007 relates to relief to workmen.

As Question of Determination No. 1 has already been decided against workmen. So workmen are entitled to no relief.

Reference is liable to be decided against workmen and in favour of Hospital management. Which is accordingly decided and claim statement is dismissed.

Award is accordingly passed.

Dated:-11.05.2016

HARBANSK KUMAR SAXENA, Presiding Officer

नई दिल्ली, 22 जून, 2016

का.आ. 1299.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स थाकुर इंफ्राप्रोजेक्ट्स प्राइवेट लिमिटेड एंड गेटवे टर्मिनल्स ऑफ इंडिया प्राइवेट लिमिटेड के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 01/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/06/2016 को प्राप्त हुआ था।

[सं. एल-31011/11/2013-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the, 22ndst June, 2016

S.O. 1299.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Thakur Infraprojects Pvt. Ltd. & Gateway Terminals of India Pvt. Ltd. and their workmen, received by the Central Government on 16/06/2016.

[No. L-31011/11/2013-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

M.V. DESHPANDE

PRESIDING OFFICER

REFERENCE NO.CGIT-2/1 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) M/s. THAKUR INFRAPROJECTS PVT. LTD.

The Director
 Thakur Infraprojects Pvt. Ltd.
 House no.1221
 At & Post Jasai
 Tal. Uran
 Distt.Raigad 400 702.

(2) GATEWAY TERMINALS OF INDIA PVT. LTD.

The Chief Executive Officer
 Gateway Terminals of India Pvt. Ltd.
 GTI House, JNP Sheva
 Navi Mumbai 407 067.

AND

THEIR WORKMEN

(1) Navi Mumbai General KamgarSanghatana

The President
 Navi Mumbai General KamgarSanghatana
 Plot No.277, Aspiare Pride
 Near Rupali Cinema
 Panvel 410 206.

(2) Transport & Dock Workers Union

The President
 Transport & Dock Workers Union
 P.D'melloBhavan
 Carnac Bunder
 Mumbai 400 038.

APPEARANCES:

FOR THE EMPLOYER (I) : Mr. Mahesh Shukla, Advocate.

FOR THE EMPLOYER (II) : No appearance.

FOR THE UNION (I) : No appearance.

FOR THE UNION (II) : Mr. A. M. Koyande, Advocate.

Mumbai, dated the 21st April, 2016.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-31011/11/2013-IR (B-II), dated 16.12.2013 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the Transport and Dock Workers Union for revision of wages and improvement in other service conditions of the workers employed by M/s. Thakur Infraprojects Pvt. Ltd. in the establishment of M/s. Gateway Terminals India Pvt. Ltd. at Jawaharlal Nehru Port Trust as per the Charter of Demands dated 16/4/2012 are legal and just? What relief the workmen concerning the Charter of Demands are entitled to?”

2. After receipt of the reference, notices were issued to the parties. Second party Union no.1 and Management no.2 remained absent though served with notice. Acknowledgement receipts are on record at Ex-3 & 4. Thereafter fresh notice served on the parties on 17/11/2014. Acknowledgement receipts are on record at Ex-7, 8 & 9. The matter was adjourned on several occasions for filing of Statement of Claim by the Second party Unions.

3. On 21/04/2016, Mr. Vinayak Koli, representing Management no.1 filed application dt. 21/4/2016 (Ex-14) for disposing of the matter stating that the matter has been settled amicably out of court. Mr. A.M. Koyande, Advocate for the Transport and Dock Workers Union i.e. second party no.2 endorsed his Say on the said application giving his no objection for disposing the Reference. Accordingly orders were passed on Ex-1. As the matter is settled amicably, no dispute remains. In the circumstances I think it proper to dispose of the Reference. Hence the order:

ORDER

Reference stands disposed of as settled.

Date: 21.04.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 22 जून, 2016

का.आ. 1300.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स जे. एम. बकशी एंड कंपनी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 36/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/06/2016 को प्राप्त हुआ था।

[सं. एल-36011/01/2012-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the, 22nd June, 2016

S.O. 1300.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s. J. M. Baxi and Co. and their workmen, received by the Central Government on 16/06/2016.

[No. L-36011/01/2012-IR (B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

M.V. DESHPANDE

PRESIDING OFFICER

REFERENCE NO.CGIT-2/36 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

M/S. J. M. BAXI & CO.

The General Manager
M/s. J.M. Baxi & Co.
Colaco Building
Swatantrapath
Vasco-da-Gama
Goa 403 802.

AND

THEIR WORKMEN

The General Secretary

Marmagao Waterfront Workers' Union

Dr. Mukund Building

P.B. No.90

Vasco-da-Gama

Goa 403 802.

APPEARANCES:

FOR THE EMPLOYER : Mr. M.S. Bandodkar, Advocate

FOR THE UNION : Mr. F.X.Rodrigues, Representative

Camp: GOA, dated the 2nd March, 2016.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-36011/1/2012-IR (B-II), dated 09.07.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the demand of the union for higher pay scale of Rs.6170-230-7320-245-11975 to Shri Joseph Pereira, Sr. Foreman consequent upon his promotion as Shift-Incharge w.e.f. 1/6/2011 is just and proper? What relief the workman concerned is entitled to?"

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Union filed their Statement of Claim at Ex-6. First party /Management resisted the Statement of Claim by filing their Written Statement at Ex-8. Today (i.e. 02/3/2016) both parties jointly filed consent terms (Ex-11) and prayed to dispose of the Reference in terms of the said consent terms. Orders were passed on Ex-11. As the matter is settled amicably between the parties, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as per consent terms (Ex-11).

Date: 02.03.2016

Camp: Goa

M.V. DESHPANDE, Presiding Officer

Ex No. 11**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, AT MUMBAI****Reference No. CGIT -2/ 36 Of 2012**

M/s. J.M. Baxi & Co.

Employer / Party I

V/S

Shri Joseph Pereira

Workman / Party II

MAY IT PLEASE YOUR HONOUR**CONSENT TERMS**

The Parties to the above reference have settled the subject matter of dispute covered in the above reference by arriving at a settlement, on the following terms:-

1. It is agreed between the parties that the Management of M/s. J.M. Baxi & Co., Colaco Bldg., Vasco-da-Gama shall pay a sum of Rs. 40,000/- (Rupees Forty Thousand only) by cheque No. 001728 dated 10.02.2016 drawn on HDFC Bank, which shall include all his claim arising out of the present reference.
2. It is agreed by the Party- II that he shall accept the amount mentioned in the clause (1) in full and final settlement of his claims raised in Reference No. CGIT-2/ 36 of 2012, in complete satisfaction of the claims arising out of present reference.
3. In view of the amicable settlement between the parties, it is respectfully prayed that an Award be passed in terms of this settlement and the reference be disposed of accordingly.

For Employer/ Party I**For Workman/ Party II**

Sd/-

M/s. J.M. Baxi & Co.

Sd/-

Shri Joseph Pereira

Sd/-

Adv. For Employer/ Party I

Sd/-

Workman/ Party II

Place: Vasco-da-Gama

Date: 02/03/2016

ORDER

Ld. Advocate for both parties are present. Parties are also present. They are admitting the contents of Settlement. They have identified their respective signatures on this settlement. They have been identified by their respective advocates. Hence read and recorded.

Sd/-

M.V. DESHPANDE, Presiding Officer

2/3/2016

RECEIPT

Received from the Management of M/s. J.M. Baxi & CO. Colaco Bldg. Vasco-da-Gama shall pay a sum of Rs. 40,000/- (Rupees Forty Thousand only) by Cheque No. 001728 dated 10/02/2016 drawn on HDFC Bank, in full and final settlement of my claims arising out of present Reference No. CGIT-2/ 36 of 2012.

Place: Vasco-da-Gama

Sd/-

Date: 02/03/2016

Shri Joseph Pereira

नई दिल्ली, 22 जून, 2016

का.आ. 1301.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स जे. एम. बक्शी एंड कंपनी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 41/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/06/2016 को प्राप्त हुआ था।

[सं. एल-36011/08/2008-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the, 22nd June, 2016

S.O. 1301.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s. J. M. Baxi and Co. and their workmen, received by the Central Government on 16/06/2016.

[No. L-36011/08/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT****M.V. DESHPANDE****PRESIDING OFFICER****REFERENCE NO.CGIT-2/41 of 2009****EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. J.M. BAXI & CO.**

The General Manager
M/s. J.M. Baxi & Co.
Colaco Building
Swatantrapath
Vasco-da-Gama
Goa 403 802.

AND**THEIR WORKMEN**

The General Secretary
Marmagao Waterfront Workers' Union
Dr. Mukund Building, 3rd floor
Vasco-da-Gama
Goa 403 802.

APPEARANCES:

FOR THE EMPLOYER : Mr. M.S. Bandodkar, Advocate
FOR THE UNION : Mr. P.J. Kamat, Advocate

Camp: GOA, dated the 2nd March, 2016**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-36011/8/2008-IR (B-II), dated 27.03.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. J.M. Baxi & Co. in non-reimbursement of medical bills of Shri Morgan Coutinho is legal and justified? What relief the concerned workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Union filed their Statement of Claim at Ex-19. First party /Management resisted the Statement of Claim by filing their Written Statement at Ex-23. Today (i.e. 02/3/2016) both parties jointly filed consent terms (Ex-69) and prayed to dispose of the Reference in terms of the said consent terms. Orders were passed on Ex-69. As the matter is settled amicably between the parties, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as per consent terms (Ex-69).

Date: 02.03.2016

CAMP: GOA

M.V. DESHPANDE, Presiding Officer

Ex No. 69**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, AT MUMBAI****Reference No. CGIT -2/ 41 Of 2009**

M/s. J.M. Baxi & Co.

Employer / Party I

V/S

Shri Morgan Coutinho

Workman / Party II

MAY IT PLEASE YOUR HONOUR**CONSENT TERMS**

The Parties to the above reference have settled the subject matter of dispute covered in the above reference by arriving at a settlement, on the following terms:-

1. It is agreed between the parties that the Management of M/s. J.M. Baxi & Co., Colaco Bldg., Vasco-da-Gama shall pay a sum of Rs. 50,000/- (Rupees Fifty Thousand only) by cheque No. 001727 dated 10.02.2016 drawn on HDFC Bank, which shall include all his claim arising out of the present reference. The above amount shall include all his claims of unpaid medical bills.
2. It is agreed by the Party- II that he shall accept the amount mentioned in the clause (1) in full and final settlement of his claims raised in Reference No. CGIT-2/ 41 of 2009, in complete satisfaction of the claims arising out of present reference.
3. In view of the amicable settlement between the parties, it is respectfully prayed that an Award be passed in terms of this settlement and the reference be disposed of accordingly.

For Employer/ Party I

Sd/-

M/s. J.M. Baxi & Co.

For Workman/ Party II

Sd/-

Shri Joseph Pereira

Sd/-

Adv. For Employer/ Party I

Sd/-

Workman/ Party II

Place: Panaji

Date: 02/03/2016

ORDER

Ld. Advocate for both the parties are present. Parties are also present. They have admitted the contents of Consent terms. They are being identified by their respective advocates.

Date : 2/3/2016

M.V. DESHPANDE, Presiding Officer

RECEIPT

Received from the Management of M/s. J.M. Baxi & CO. Colaco Bldg. Vasco-da-Gama shall pay a sum of Rs. 50,000/- (Rupees Fifty Thousand only) by Cheque No. 001727 dated 10/02/2016 drawn on HDFC Bank, in full and final settlement of my claims arising out of present Reference No. CGIT-2/ 41 of 2009.

Place: Vasco-da-Gama

Sd/-

Date: 02/03/2016

Shri Morgan Coutinho

नई दिल्ली, 22 जून, 2016

का.आ. 1302.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स मुंबई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबंध में नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 49/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/06/2016 को प्राप्त हुआ था।

[सं. एल-31011/03/2012-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 22nd June, 2016

S.O. 1302.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s. Mumbai Port Trust and their workmen, received by the Central Government on 16/06/2016.

[No. L-31011/03/2012-IR (B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

M.V. DESHPANDE

PRESIDING OFFICER

REFERENCE No. CGIT-2/49 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MUMBAI PORT TRUST

The Chairman
Mumbai Port Trust
Port House, Ballard Estate
Mumbai 400 038.

AND

THEIR WORKMEN

The Secretary
MbPT Mazdoor Sangh
Parvati Building
7, Pitha Street
Off Sir P.M. Road
Mumbai 400 001.

APPEARANCES :

FOR THE EMPLOYER : Mr. UmeshNabar, Advocate
FOR THE UNION : Mr.Abhay Kulkarni, Advocate
Mumbai, dated the 28thMarch, 2016

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-31011/3/2012-IR (B-II), dated 16.10.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of MbPTMazdoorSangh for transfer of Shri P.Y. Choughule, Diesel Engine Driver, Grade-I from MoD Flotilla repair Shed to MOT JawaharDweep is legal, just and proper? If so, what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party union filed their Statement of Claim at Ex-5. First party/ Management resisted the Statement of Claim of Union by filing their Written Statement at Ex-7. Thereafter matter was fixed for framing of issues. Today second party/ union filed application Ex-9 for disposing off the present Reference as the demand of the Union with respect to the industrial dispute in this Reference is met. They also prayed that the Reference CGIT-2/49 of 2012 may be disposed of without any prejudice to their pending Ref.CGIT-2/53 of 2012. Advocate for the Management endorsed his Say on Ex-9 giving ‘No objection’. Orders were passed on Ex-9 in open Court. As the Second Party Union does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 28.03.2016

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 23 जून 2016

का.आ. 1303.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 1 चंडीगढ़ के पंचाट (संदर्भ सं. 82/2012) को प्रकापित करती है जो केन्द्रीय सरकार को 22/06/2016 को प्राप्त हुआ था।

[सं. एल-40012/81/2012-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the, 23rd June, 2016

S.O. 1303.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No.82/2012) of the Central Government Industrial Tribunal-Cum-Labour Court No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 22/06/2016.

[No. L-40012/81/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No 82 of 2012, Reference No. L-40012/81/2012-IR (D-U) dated 21.01.2013.

Shri Ranjit Singh son of Shri Bakshish Singh, Resident of Society Nagar Back Side Jail Faridkot, Ralan Wala Road, Tehsil & District Faridkot.

...Workman

Versus

1. The General Manager, Telecom, BSNL, Bharat Nagar Chowk, Ferozepur.
2. The Chief General Manager, Telecom, BSNL Punjab Circle, SCO No.102-103, Sector-34A, Chandigarh.
3. DET, BSNL Faridkot Cantt (Pb).
4. SDO(P), BSNL Faridkot Cantt. (PB).

...Respondents

Appearances :

For the Workman : Shri Rohit Garg Advocate
For the Management : Shri D.R. Sharma Advocate

AWARD

Passed on: -16-06-2016

Government of India Ministry of Labour vide notification No. . L-40012/81/2012-IR (DU) dated 21.01.2013 the Central Govt. has referred the following dispute to this Tribunal for adjudication:

“Whether the demand of Shri Ranjit Singh son of Shri Bakshish Singh against the CGM Telephone, BSNL, Sector 34, Chandigarh/General Manager, BSNL Ferozepur/DET/SDE, BSNL, Faridkot for reinstatement in service w.e.f. 28.6.2011 is just valid and legal? If so, what benefits the workman is entitled for and what directions are necessary in the matter?”

2. Brief facts of the case according to the workman are that he was working in BSNL as helper lineman since 2000 in telephone exchange Faridkot regularly without any break. Earlier the management stopped his work including some other employees without giving any notice and workman filed complaint on 20.11.2008 with the Assistant Labour Commissioner, Chandigarh and presented a demand notice under Section 2K. A settlement dated 16.11.2009 arrived at before the ALC between the workman and the BSNL over the issue of termination of services and the Chief General Manager BSNL Chandigarh agreed to re-employ the workman with immediate effect on the same service conditions applicable to him before his termination. In view of the settlement, the workman and other persons joined on 18.11.2009 and worked with the department till 28.6.2011 and the officers of the management ordered to the workman not to come on duty and they also refused to give their due salary/payment without any written notice and asked them

to work with the some contractor as labourer. The management passed out this message through letter. The workman refused to do the work under contractor because the workman was the employee of BSNL as per the settlement. The workman gave a letter to DET BSNL Faridkot and telegramme to Chief Labour Commissioner, Chandigarh. The workman gave an application regarding his illegal termination to Assistant Labour Commissioner and assistant Labour Commissioner sent a letter on 1.8.2012 under failure of conciliation to the Ministry of Labour and hence the present reference. It is further submitted by the workman that he never refused to do his work as a permanent employee of the BSNL as a helper lineman but he demanded his salary, EPF, ESI and increased salary. It is prayed by the workman that he may be reinstated in service as on same post with continuity of service with all consequential benefits. Along with claim statement workman also filed documents.

3. The management in reply have taken preliminary objections that workman was never appointed by the management against any regular post and workman did not work on any duty as casual/regular employee and he never worked as helper lineman in BSNL and he might have worked with some contractor. The workman never engaged by the management, therefore, there is no question of his termination. It is further submitted by the management that the workman has not disclosed that a criminal case has been filed and the same is pending against the workman. It is further submitted that the claim statement is liable to be dismissed for non-joinder of necessary parties. The workman was working under M/s. Bakshish Singh, Malwal Road, Ferozepur(Contractor) and the same has not been arrayed as respondent. The management specifically pleaded that workman was never appointed by the management against any regular post or by following any recruitment procedure and there is no relationship of master and servant. The conciliation officer held a discussion on 16.11.2009 and the concerned officer was not the competent authority to sign the settlement. During conciliation proceedings, the conciliation officer persuaded the above representative of the management that the worker be given work through contractor and it was not the intention that the worker is to be re-employed as worker of the regular establishment of BSNL and there was no decree to re-employee the said workman on regular basis. The petty nature works of the outdoor plant of the management were awarded to the contractors. The workman was found working with the contractor and getting salary from the contractor prior to June 2011. It is pleaded that management is committed to comply with the implementation of minimum wages act and ready to assist the applicant in this regard. The workman instead of adopting proper procedure for increased wages went on sabotaging the services and threatening the BSNL employees to get the revised payment from the contractor on the basis of revised labour rates. The BSNL authorities reported to the police authorities against sabotage of service and threatening to the BSNL employees and police registered DDR No.16 dated 20.6.2011 under Section 427 and 506 of IPC and the criminal case is pending against the workman in the court of Chief Judicial Magistrate Faridkot. It is also submitted that thereafter workman approached the Labour Commissioner Chandigarh in the capacity of contractor labour and claimed his arrears from Shri Bakshish Singh, Malwal Road, Ferozepur(Contractor) and the management helped the workman in getting the wages from the above contractor according to minimum wages act.. It is prayed by the management that as the workman was never employed by the management therefore, there is no question of the termination and reinstatement of the workman and prayed for dismissal of the claim statement.

4. In evidence, the workman filed his affidavit Ex.W1 and also relied on documents Ex.W2 to W11. In rebuttal the management filed the affidavit Ex.M1 of Shamsher Bahadur Singh DET Faridkot who also relied on documents Ex.M2 to M7. Both the witnesses were cross-examined by the parties.

5. I have heard the parties, gone through the evidence and record.

6. The workman Ranjit Singh in oral evidence appearing as WW1 in cross-examination admitted that he was not given any appointment letter as helper line man by the BSNL. This witness further stated that he filed complaint before the A.L.C. (Central) in 2008 and settlement was arrived at that he will be taken in service through the contractor Mr. Bakshish Singh. This witness further stated that he filed complaint against the BSNL and not against any contractor. He further admitted the contents of the documents Ex.W2 to W11.

7. MW1 Shamsher Bahadur Singh DET BSNL Faridkot in cross-examination stated that workman made a complaint for not giving minimum wages. M5 is the document pertaining to the complaint of the workman in pursuance of the workman complaint arrear was paid and by order M6 the compensation was paid by the contractor. BSNL was the party but the compensation was paid by the contractor and not by the BSNL. Ex.W4 is the settlement before Deputy Chief Labour Commissioner. This witness further stated in cross examination that " we do not engage directly. All workers are called for work through contractor only. Contractor submit the bill and the management clear the same".

8. The management submitted document Ex.M2 photocopy of agreement for maintenance of O/D Plant of Faridkot between M/s. Bakshish Singh contractor Ferozepur City and the DET (Planning) O/o General Manager Telecom, Ferozepur, Ex.M3 photocopies of register of contractor along with muster roll, deposit of EPF, along with list of worker running into 90 pages, Ex.M4 letter dated 19-12-2011 from Labour Enforcement Officer (Central) Chandigarh written to the contractor M/S Bakshish Singh regarding arrear of less payment made by the contractor of the 16 workmen on account of minimum wages and for making the payment immediately to the workers for the month of October 2010 to March 2011, Ex.M5 arrear in r/o the labour, Ex.M6 is the decision of the Regional Labour Commissioner(C) Chandigarh dated 23-07-2012 under section 20(3) of the Minimum Wages Act, 1948 passed in claim

application no.50 of 2012 against M/s. Bakhshish Singh contractor and General Manager,BSNL Ferozepur Cantt. In this order it is mentioned that opponents directed to deposit the amount of Rs.8000/- through demand draft in favour of the workmen within 30 days and Ex.M7 is the photocopy of cheques issued to workmen by the contractor for the amount of Rs. 500/- each. In compliance of the order Ex.M6. From the above it is clear that the amount of compensation was paid by the contractor not by the BSNL i.e. management.

9. Thus in view of the facts and circumstances of the case, the workman was not the employee of the BSNL and he was the employee of the contractor M/s. Bakhshish Singh who paid him the wages in terms of the contract/agreement placed on the record by the management and there is no question of reinstatement in service for the workman by the management w.e.f 28-6-2011. It is further observed that the settlement dated 16-11-2009 (Ex.W4) before the Conciliation Officer and Deputy Chief Labour Commissioner(Central) Chandigarh between the workman and the management of BSNL shall be given due regard.

10. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

16.06.2016

S.P. SINGH, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1304.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 1 चंडीगढ़ के पंचाट (संदर्भ सं. 83/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/06/2016 को प्राप्त हुआ था।

[सं. एल-40012/82/2012-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the, 23rd June, 2016

S.O. 1304.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 83/2012) of the Central Government Industrial Tribunal-Cum-Labour Court No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 22/06/2016.

[No. L-40012/82/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID No 83 of 2012, Reference no. L-40012/82/2012-IR (DU) dated 21.01.2013.

Shri Gurjant Singh son of Shri Prem Singh, Resident of Bajigar Basti, Faridkot, Tehsil &District Faridkot.

... Workman

Versus

1. The General Manager, Telecom, BSNL, Bharat Nagar Chowk, Ferozepur.
2. The Chief General Manager, Telecom, BSNL Punjab Circle, SCO No.102-103, Sector-34A, Chandigarh.
3. DET, BSNL Faridkot Cantt (Pb).
4. SDO(P), BSNL Faridkot Cantt. (PB).

... Respondents

Appearances :

For the Workman : Shri Rohit Garg Advocate

For the Management : Shri D.R. Sharma Advocate

AWARD

Passed on: -16-06-2016

Government of India Ministry of Labour vide notification No. . L-40012/82/2012/IR (D-U) dated 21.01.2013 the Central Govt. has referred the following dispute to this Tribunal for adjudication:

“Whether the demand of Shri Gurjant Singh son of Prem Singh against the CGM Telephone, BSNL, Sector 34, Chandigarh/General Manager, BSNL Ferozepur/DET/SDE, BSNL, Faridkot for reinstatement in service w.e.f. 28.6.2011 is just valid and legal? If so, what benefits the workman is entitled for and what directions are necessary in the matter?”

2. Brief facts of the case according to the workman are that he was working in BSNL as helper lineman since 2000 in telephone exchange Faridkot regularly without any break. Earlier the management stopped his work including some other employees without giving any notice and workman filed complaint on 20.11.2008 with the Assistant Labour Commissioner, Chandigarh and presented a demand notice under Section 2K. A settlement dated 16.11.2009 arrived at before the ALC between the workman and the BSNL over the issue of termination of services and the Chief General Manager BSNL Chandigarh agreed to re-employ the workman with immediate effect on the same service conditions applicable to him before his termination. In view of the settlement, the workman and other persons joined on 18.11.2009 and worked with the department till 28.6.2011 and the officers of the management ordered to the workman not to come on duty and they also refused to give their due salary/payment without any written notice and asked them to work with the some contractor as labourer. The management passed out this message through letter. The workman refused to do the work under contractor because the workman was the employee of BSNL as per the settlement. The workman gave a letter to DET BSNL Faridkot and telegramme to Chief Labour Commissioner, Chandigarh. The workman gave an application regarding his illegal termination to Assistant Labour Commissioner and assistant Labour Commissioner sent a letter on 1.8.2012 under failure of conciliation to the Ministry of Labour and hence the present reference. It is further submitted by the workman that he never refused to do his work as a permanent employee of the BSNL as a helper lineman but he demanded his salary, EPF, ESI and increased salary. It is prayed by the workman that he may be reinstated in service as on same post with continuity of service with all consequential benefits. Along with claim statement workman also filed documents.

3. The management in reply have taken preliminary objections that workman was never appointed by the management against any regular post and workman did not work on any duty as casual/regular employee and he never worked as helper lineman in BSNL and he might have worked with some contractor. The workman never engaged by the management, therefore, there is no question of his termination. It is further submitted by the management that the workman has not disclosed that a criminal case has been filed and the same is pending against the workman. It is further submitted that the claim statement is liable to be dismissed for non-joinder of necessary parties. The workman was working under M/S Bakshish Singh, Malwal Road, Ferozepur(Contractor) and the same has not been arrayed as respondent. The management specifically pleaded that workman was never appointed by the management against any regular post or by following any recruitment procedure and there is no relationship of master and servant. The conciliation officer held a discussion on 16.11.2009 and the concerned officer was not the competent authority to sign the settlement. During conciliation proceedings, the conciliation officer persuaded the above representative of the management that the worker be given work through contractor and it was not the intention that the worker is to be re-employed as worker of the regular establishment of BSNL and there was no decree to re-employee the said workman on regular basis. The petty nature works of the outdoor plant of the management were awarded to the contractors. The workman was found working with the contractor and getting salary from the contractor prior to June 2011. It is pleaded that management is committed to comply with the implementation of minimum wages act and ready to assist the applicant in this regard. The workman instead of adopting proper procedure for increased wages went on sabotaging the services and threatening the BSNL employees to get the revised payment from the contractor on the basis of revised labour rates. The BSNL authorities reported to the police authorities against sabotage of service and threatening to the BSNL employees and police registered DDR No.16 dated 20.6.2011 under Section 427 and 506 of IPC and the criminal case is pending against the workman in the court of Chief Judicial Magistrate Faridkot. It is also submitted that thereafter workman approached the Labour Commissioner Chandigarh in the capacity of contractor labour and claimed his arrears from Shri Bakshish Singh Malwal Road Ferozepur(Contractor) and the management helped the workman in getting the wages from the above contractor according to minimum wages act.. It is prayed by the management that as the workman was never employed by the management therefore, there is no question of the termination and reinstatement of the workman and prayed for dismissal of the claim statement.

4. In evidence, the workman filed his affidavit Ex.W1 and also relied on documents Ex.W2 to w11. In rebuttal the management filed the affidavit Ex.M1 of Shamsher Bahadur Singh DET Faridkot who also relied on documents Ex.M2 to M7. Both the witnesses were cross-examined by the parties.

5. I have heard the parties, gone through the evidence and record.

6. The workman Gurjant Singh in oral evidence appearing as WW1 in cross-examination admitted that he was not given any appointment letter as helper line man by the BSNL. This witness further stated that he filed complaint

before the A.L.C. (Central) in 2008 and settlement was arrived at that he will be taken in service through the contractor Mr. Bakhshish Singh. This witness further stated that he filed complaint against the BSNL and not against any contractor. He further admitted the contents of the documents Ex.W2 to W11.

7. MW1 Shamsher Bahadur Singh DET BSNL Faridkot in cross-examination stated that workman made a complaint for not giving minimum wages. M5 is the document pertaining to the complaint of the workman in pursuance of the workman complaint arrear was paid and by order M6 the compensation was paid by the contractor. BSNL was the party but the compensation was paid by the contractor and not by the BSNL. Ex.W4 is the settlement before Deputy Chief Labour Commissioner. This witness further stated in cross examination that “we do not engage directly. All workers are called for work through contractor only. Contractor submit the bill and the management clear the same”.

8. The management submitted document Ex.M2 photocopy of agreement for maintenance of O/D Plant of Faridkot between M/S Bakhshish Singh contractor Ferozepur City and the DET (Planning) O/o General Manager Telecom, Ferozepur, Ex.M3 photocopies of register of contractor along with muster roll, deposit of EPF, along with list of worker running into 90 pages, Ex.M4 letter dated 19-12-2011 from Labour Enforcement Officer (Central) Chandigarh written to the contractor M/S Bakhshish Singh regarding arrear of less payment made by the contractor of the 16 workmen on account of minimum wages and for making the payment immediately to the workers for the month of October 2010 to March 2011, Ex.M5 arrear in r/o the labour, Ex.M6 is the decision of the Regional Labour Commissioner(C) Chandigarh dated 23-07-2012 under section 20(3) of the Minimum Wages Act, 1948 passed in claim application no.50 of 2012 against M/S Bakhshish Singh contractor and General Manager, BSNL Ferozepur Cantt. In this order it is mentioned that opponents directed to deposit the amount of Rs.8000/- through demand draft in favour of the workmen within 30 days and Ex.M7 is the photocopy of cheques issued to workmen by the contractor for the amount of Rs. 500/- each. In compliance of the order Ex.M6. From the above it is clear that the amount of compensation was paid by the contractor not by the BSNL i.e. management.

9. Thus in view of the facts and circumstances of the case, the workman was not the employee of the BSNL and he was the employee of the contractor M/s. Bakhshish Singh who paid him the wages in terms of the contract/agreement placed on the record by the management and there is no question of reinstatement in service for the workman by the management w.e.f 28-6-2011. It is further observed that the settlement dated 16-11-2009 (Ex.W4) before the Conciliation Officer and Deputy Chief Labour Commissioner(Central) Chandigarh between the workman and the management of BSNL shall be given due regard.

10. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.
16.06.2016

S.P. SINGH, Presiding Officer

नई दिल्ली, 23 जून 2016

का.आ 1305.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, 1 चंडीगढ़ के पंचाट (संदर्भ सं. 84/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/06/2016 को प्राप्त हुआ था।

[सं. एल-40012/83/2012-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the, 23rd June, 2016

S.O. 1305.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 84/2012) of the Central Government Industrial Tribunal-Cum-Labour Court No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 22/06/2016.

[No. L-40012/83/2012-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH.**

Case No. ID No 84 of 2012, Reference No. L-40012/83/2012/IR (D-U) dated 21.01.2013.

Shri Jaspal Singh son of Shri Inderjit Singh, Resident of Sadhanwala, Tehsil &District Faridkot.

...Workman

Versus

1. The General Manager, Telecom, BSNL, Bharat Nagar Chowk, Ferozepur.
2. The Chief General Manager, Telecom, BSNL Punjab Circle, SCO No. 102-103, Sector-34A, Chandigarh.
3. DET, BSNL Faridkot Cantt (Pb).
4. SDO(P), BSNL Faridkot Cantt. (PB).

...Respondents

Appearances :

For the Workman : Shri Rohit Garg Advocate.
For the Management : Shri D.R. Sharma Advocate.

AWARD

Passed on: -16-06-2016

Government of India Ministry of Labour vide notification No. . L-40012/83/2012/IR (D-U) dated 21.01.2013 the Central Govt. has referred the following dispute to this Tribunal for adjudication:

“Whether the demand of Shri Jaspal Singh son of Shri Inderjit Singh against the CGM Telephone, BSNL, Sector 34, Chandigarh/General Manager, BSNL Ferozepur/DET/SDE, BSNL, Faridkot for reinstatement in service w.e.f. 28.6.2011 is just valid and legal? If so, what benefits the workman is entitled for and what directions are necessary in the matter?”

2. Brief facts of the case according to the workman are that he was working in BSNL as helper lineman since 2000 in telephone exchange Faridkot regularly without any break. Earlier the management stopped his work including some other employees without giving any notice and workman filed complaint on 20.11.2008 with the Assistant Labour Commissioner, Chandigarh and presented a demand notice under Section 2K. A settlement dated 16.11.2009 arrived at before the ALC between the workman and the BSNL over the issue of termination of services and the Chief General Manager BSNL Chandigarh agreed to re-employ the workman with immediate effect on the same service conditions applicable to him before his termination. In view of the settlement, the workman and other persons joined on 18.11.2009 and worked with the department till 28.6.2011 and the officers of the management ordered to the workman not to come on duty and they also refused to give their due salary/payment without any written notice and asked them to work with the some contractor as labourer. The management passed out this message through letter. The workman refused to do the work under contractor because the workman was the employee of BSNL as per the settlement. The workman gave a letter to DET BSNL Faridkot and telegramme to Chief Labour Commissioner, Chandigarh. The workman gave an application regarding his illegal termination to Assistant Labour Commissioner and assistant Labour Commissioner sent a letter on 1.8.2012 under failure of conciliation to the Ministry of Labour and hence the present reference. It is further submitted by the workman that he never refused to do his work as a permanent employee of the BSNL as a helper lineman but he demanded his salary, EPF, ESI and increased salary. It is prayed by the workman that he may be reinstated in service as on same post with continuity of service with all consequential benefits. Along with claim statement workman also filed documents.

3. The management in reply have taken preliminary objections that workman was never appointed by the management against any regular post and workman did not work on any duty as casual/regular employee and he never worked as helper lineman in BSNL and he might have worked with some contractor. The workman never engaged by the management, therefore, there is no question of his termination. It is further submitted by the management that the workman has not disclosed that a criminal case has been filed and the same is pending against the workman. It is further submitted that the claim statement is liable to be dismissed for non-joinder of necessary parties. The workman was working under M/S Bakshish Singh, Malwal Road, Ferozepur (Contractor) and the same has not been arrayed as respondent. The management specifically pleaded that workman was never appointed by the management against any regular post or by following any recruitment procedure and there is no relationship of master and servant. The conciliation officer held a discussion on 16.11.2009 and the concerned officer was not the competent authority to sign the settlement. During conciliation proceedings, the conciliation officer persuaded the above representative of the

management that the worker be given work through contractor and it was not the intention that the worker is to be re-employed as worker of the regular establishment of BSNL and there was no decree to re-employee the said workman on regular basis. The petty nature works of the outdoor plant of the management were awarded to the contractors. The workman was found working with the contractor and getting salary from the contractor prior to June 2011. It is pleaded that management is committed to comply with the implementation of minimum wages act and ready to assist the applicant in this regard. The workman instead of adopting proper procedure for increased wages went on sabotaging the services and threatening the BSNL employees to get the revised payment from the contractor on the basis of revised labour rates. The BSNL authorities reported to the police authorities against sabotage of service and threatening to the BSNL employees and police registered DDR No.16 dated 20.6.2011 under Section 427 and 506 of IPC and the criminal case is pending against the workman in the court of Chief Judicial Magistrate Faridkot. It is also submitted that thereafter workman approached the Labour Commissioner Chandigarh in the capacity of contractor labour and claimed his arrears from Shri Bakhshish Singh Malwal Road Ferozepur(Contractor) and the management helped the workman in getting the wages from the above contractor according to minimum wages act.. It is prayed by the management that as the workman was never employed by the management therefore, there is no question of the termination and reinstatement of the workman and prayed for dismissal of the claim statement.

4. In evidence, the workman filed his affidavit Ex.W1 and also relied on documents Ex.W2 to w11. In rebuttal the management filed the affidavit Ex.M1 of Shamsher Bahadur Singh DET Faridkot who also relied on documents Ex.M2 to M7. Both the witnesses were cross-examined by the parties.

5. I have heard the parties, gone through the evidence and record.

6. The workman Jaspal Singh in oral evidence appearing as WW1 in cross-examination admitted that he was not given any appointment letter as helper line man by the BSNL. This witness further stated that he filed complaint before the A.L.C. (Central) in 2008 and settlement was arrived at that he will be taken in service through the contractor Mr. Bakhshish Singh. This witness further stated that he filed complaint against the BSNL and not against any contractor. He further admitted the contents of the documents Ex.W2 to W11.

7. MW1 Shamsher Bahadur Singh DET BSNL Faridkot in cross-examination stated that workman made a complaint for not giving minimum wages. M5 is the document pertaining to the complaint of the workman in pursuance of the workman complaint arrear was paid and by order M6 the compensation was paid by the contractor. BSNL was the party but the compensation was paid by the contractor and not by the BSNL. Ex.W4 is the settlement before Deputy Chief Labour Commissioner. This witness further stated in cross examination that “ we do not engage directly. All workers are called for work through contractor only. Contractor submit the bill and the management clear the same”.

8. The management submitted document Ex.M2 photocopy of agreement for maintenance of O/D Plant of Faridkot between M/S Bakhshish Singh contractor Ferozepur City and the DET (Planning) O/o General Manager Telecom, Ferozepur, Ex.M3 photocopies of register of contractor along with muster roll, deposit of EPF, along with list of worker running into 90 pages, Ex.M4 letter dated 19-12-2011 from Labour Enforcement Officer (Central) Chandigarh written to the contractor M/S Bakhshish Singh regarding arrear of less payment made by the contractor of the 16 workmen on account of minimum wages and for making the payment immediately to the workers for the month of October 2010 to March 2011, Ex.M5 arrear in r/o the labour, Ex.M6 is the decision of the Regional Labour Commissioner(C) Chandigarh dated 23-07-2012 under section 20(3) of the Minimum Wages Act, 1948 passed in claim application no.50 of 2012 against M/S Bakhshish Singh contractor and General Manager, BSNL Ferozepur Cantt. In this order it is mentioned that opponents directed to deposit the amount of Rs.8000/- through demand draft in favour of the workmen within 30 days and Ex.M7 is the photocopy of cheques issued to workmen by the contractor for the amount of Rs. 500/- each. In compliance of the order Ex.M6. From the above it is clear that the amount of compensation was paid by the contractor not by the BSNL i.e. management.

9. Thus in view of the facts and circumstances of the case, the workman was not the employee of the BSNL and he was the employee of the contractor M/S Bakhshish Singh who paid him the wages in terms of the contract/agreement placed on the record by the management and there is no question of reinstatement in service for the workman by the management w.e.f 28-6-2011. It is further observed that the settlement dated 16-11-2009 (Ex.W4) before the Conciliation Officer and Deputy Chief Labour Commissioner(Central) Chandigarh between the workman and the management of BSNL shall be given due regard.

10. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.
16.6.2016

नई दिल्ली, 23 जून 2016

का.आ. 1306.—ओद्योगिक विवाद अधिनियम 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1 चंडीगढ़ के पंचाट (संदर्भ सं. 85/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/06/2016 को प्राप्त हुआ था।

[सं. एल -40012/85/2012- आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the, 23rd June, 2016

S.O. 1306.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 85/2012) of the Central Government Industrial Tribunal-Cum-Labour Court No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 22/06/2016.

[F. No. L-40012/85/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID No 85 of 2012, Reference no. L-40012/85/2012/IR (D-U) dated 21.01.2013.

Shri Jagtar Singh son of Shri Ajaib Singh, Resident of Society Nagar Back Side Jail Ralan wal Road, Tehsil & District Faridkot.

...Workman

Versus

1. The General Manager, Telecom, BSNL, Bharat Nagar Chowk, Ferozepur.
2. The Chief General Manager, Telecom, BSNL Punjab Circle, SCO No. 102-103, Sector-34A, Chandigarh.
3. DET, BSNL Faridkot Cantt (Pb).
4. SDO(P), BSNL Faridkot Cantt. (PB).

...Respondents

Appearances :

For the Workman : Shri Rohit Garg Advocate.

For the Management : Shri D.R. Sharma Advocate.

AWARD

Passed on: -16-06-2016

Government of India Ministry of Labour vide notification No. L-40012/85/2012/IR (D-U) dated 21.01.2013 the Central Govt. has referred the following dispute to this Tribunal for adjudication:

“Whether the demand of Shri Jagtar Singh son of Shri Ajaib Singh against the CGM Telephone, BSNL, Sector 34, Chandigarh/General Manager, BSNL Ferozepur/DET/SDE, BSNL, Faridkot for reinstatement in service w.e.f. 28.6.2011 is just valid and legal? If so, what benefits the workman is entitled for and what directions are necessary in the matter?”

2. Brief facts of the case according to the workman are that he was working in BSNL as helper lineman since 2000 in telephone exchange Faridkot regularly without any break. Earlier the management stopped his work including some other employees without giving any notice and workman filed complaint on 20.11.2008 with the Assistant Labour Commissioner, Chandigarh and presented a demand notice under Section 2K. A settlement dated 16.11.2009 arrived at before the ALC between the workman and the BSNL over the issue of termination of services and the Chief General Manager BSNL Chandigarh agreed to re-employ the workman with immediate effect on the same service conditions applicable to him before his termination. In view of the settlement, the workman and other persons joined on 18.11.2009 and worked with the department till 28.6.2011 and the officers of the management ordered to the workman

not to come on duty and they also refused to give their due salary/payment without any written notice and asked them to work with the some contractor as labourer. The management passed out this message through letter. The workman refused to do the work under contractor because the workman was the employee of BSNL as per the settlement. The workman gave a letter to DET BSNL Faridkot and telegramme to Chief Labour Commissioner, Chandigarh. The workman gave an application regarding his illegal termination to Assistant Labour Commissioner and assistant Labour Commissioner sent a letter on 1.8.2012 under failure of conciliation to the Ministry of Labour and hence the present reference. It is further submitted by the workman that he never refused to do his work as a permanent employee of the BSNL as a helper lineman but he demanded his salary, EPF, ESI and increased salary. It is prayed by the workman that he may be reinstated in service as on same post with continuity of service with all consequential benefits. Along with claim statement workman also filed documents.

3. The management in reply have taken preliminary objections that workman was never appointed by the management against any regular post and workman did not work on any duty as casual/regular employee and he never worked as helper lineman in BSNL and he might have worked with some contractor. The workman never engaged by the management, therefore, there is no question of his termination. It is further submitted by the management that the workman has not disclosed that a criminal case has been filed and the same is pending against the workman. It is further submitted that the claim statement is liable to be dismissed for non-joinder of necessary parties. The workman was working under M/S Bakshish Singh, Malwal Road, Ferozepur (Contractor) and the same has not been arrayed as respondent. The management specifically pleaded that workman was never appointed by the management against any regular post or by following any recruitment procedure and there is no relationship of master and servant. The conciliation officer held a discussion on 16.11.2009 and the concerned officer was not the competent authority to sign the settlement. During conciliation proceedings, the conciliation officer persuaded the above representative of the management that the worker be given work through contractor and it was not the intention that the worker is to be re-employed as worker of the regular establishment of BSNL and there was no decree to re-employee the said workman on regular basis. The petty nature works of the outdoor plant of the management were awarded to the contractors. The workman was found working with the contractor and getting salary from the contractor prior to June 2011. It is pleaded that management is committed to comply with the implementation of minimum wages act and ready to assist the applicant in this regard. The workman instead of adopting proper procedure for increased wages went on sabotaging the services and threatening the BSNL employees to get the revised payment from the contractor on the basis of revised labour rates. The BSNL authorities reported to the police authorities against sabotage of service and threatening to the BSNL employees and police registered DDR No.16 dated 20.6.2011 under Section 427 and 506 of IPC and the criminal case is pending against the workman in the court of Chief Judicial Magistrate Faridkot. It is also submitted that thereafter workman approached the Labour Commissioner Chandigarh in the capacity of contractor labour and claimed his arrears from Shri Bakshish Singh, Malwal Road, Ferozepur (Contractor) and the management helped the workman in getting the wages from the above contractor according to minimum wages act.. It is prayed by the management that as the workman was never employed by the management therefore, there is no question of the termination and reinstatement of the workman and prayed for dismissal of the claim statement.

4. In evidence, the workman filed his affidavit Ex.W1 and also relied on documents Ex.W2 to W11. In rebuttal the management filed the affidavit Ex.M1 of Shamsher Bahadur Singh DET Faridkot who also relied on documents Ex.M2 to M7. Both the witnesses were cross-examined by the parties.

5. I have heard the parties, gone through the evidence and record.

6. The workman Jagtar Singh in oral evidence appearing as WW1 in cross-examination admitted that he was not given any appointment letter as helper line man by the BSNL. This witness further stated that he filed complaint before the A.L.C. (Central) in 2008 and settlement was arrived at that he will be taken in service through the contractor Mr. Bakshish Singh. This witness further stated that he filed complaint against the BSNL and not against any contractor. He further admitted the contents of the documents Ex.W2 to W11.

7. MW1 Shamsher Bahadur Singh DET BSNL Faridkot in cross-examination stated that workman made a complaint for not giving minimum wages. M5 is the document pertaining to the complaint of the workman in pursuance of the workman complaint arrear was paid and by order M6 the compensation was paid by the contractor. BSNL was the party but the compensation was paid by the contractor and not by the BSNL. Ex.W4 is the settlement before Deputy Chief Labour Commissioner. This witness further stated in cross examination that "we do not engage directly. All workers are called for work through contractor only. Contractor submit the bill and the management clear the same".

8. The management submitted document Ex.M2 photocopy of agreement for maintenance of O/D Plant of Faridkot between M/S Bakshish Singh contractor Ferozepur City and the DET (Planning) O/o General Manager Telecom, Ferozepur, Ex.M3 photocopies of register of contractor along with muster roll, deposit of EPF, along with list of worker running into 90 pages, Ex.M4 letter dated 19-12-2011 from Labour Enforcement Officer (Central) Chandigarh written to the contractor M/S Bakshish Singh regarding arrear of less payment made by the contractor of the 16 workmen on account of minimum wages and for making the payment immediately to the workers for the month of October 2010 to March 2011, Ex.M5 arrear in r/o the labour, Ex.M6 is the decision of the Regional Labour

Commissioner(C) Chandigarh dated 23-07-2012 under section 20(3) of the Minimum Wages Act, 1948 passed in claim application no.50 of 2012 against M/S Bakhshish Singh contractor and General Manager,BSNL Ferozepur Cantt. In this order it is mentioned that opponents directed to deposit the amount of Rs.8000/- through demand draft in favour of the workmen within 30 days and Ex.M7 is the photocopy of cheques issued to workmen by the contractor for the amount of Rs. 500/- each. In compliance of the order Ex.M6. From the above it is clear that the amount of compensation was paid by the contractor not by the BSNL i.e. management.

9. Thus in view of the facts and circumstances of the case, the workman was not the employee of the BSNL and he was the employee of the contractor M/S Bakhshish Singh who paid him the wages in terms of the contract/agreement placed on the record by the management and there is no question of reinstatement in service for the workman by the management w.e.f 28-6-2011. It is further observed that the settlement dated 16-11-2009 (Ex.W4) before the Conciliation Officer and Deputy Chief Labour Commissioner(Central) Chandigarh between the workman and the management of BSNL shall be given due regard.

10. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

16.6.2016

S.P. SINGH, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1307.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 86/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/06/2016 को प्राप्त हुआ था।

[सं. एल-40012/86/2012-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 23rd June, 2016

S.O. 1307.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 86/2012) of the Central Government Industrial Tribunal-Cum-Labour Court No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 22/06/2016.

[No. L-40012/86/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID No 86 of 2012, Reference no. L-40012/86/2012/IR (D-U) dated 21.01.2013.

Shri Bhupinder Singh son of Shri Sadhu Singh, Resident of Village Sangrahoor, Tehsil & District Faridkot.

... Workman

Versus

1. The General Manager, Telecom, BSNL, Bharat Nagar Chowk, Ferozepur.
2. The Chief General Manager, Telecom, BSNL Punjab Circle, SCO No.102-103, Sector-34A, Chandigarh.
3. DET, BSNL Faridkot Cantt (Pb).
4. SDO(P), BSNL Faridkot Cantt (PB).

... Respondents

Appearances :

For the Workman : Shri Rohit Garg Advocate

For the Management : Shri D.R. Sharma Advocate

AWARD**Passed on: -16-06-2016**

Government of India Ministry of Labour vide notification No. . L-40012/86/2012/IR (D-U) dated 21.01.2013 the Central Govt. has referred the following dispute to this Tribunal for adjudication:

“Whether the demand of Shri Bhupinder Singh son of Shri Sadhu Singh against the CGM Telephone, BSNL, Sector 34, Chandigarh/General Manager, BSNL Ferozepur/DET/SDE, BSNL, Faridkot for reinstatement in service w.e.f. 28.6.2011 is just valid and legal? If so, what benefits the workman is entitled for and what directions are necessary in the matter?”

2. Brief facts of the case according to the workman are that he was working in BSNL as helper lineman since 2000 in telephone exchange Faridkot regularly without any break. Earlier the management stopped his work including some other employees without giving any notice and workman filed complaint on 20.11.2008 with the Assistant Labour Commissioner, Chandigarh and presented a demand notice under Section 2K. A settlement dated 16.11.2009 arrived at before the ALC between the workman and the BSNL over the issue of termination of services and the Chief General Manager BSNL Chandigarh agreed to re-employ the workman with immediate effect on the same service conditions applicable to him before his termination. In view of the settlement, the workman and other persons joined on 18.11.2009 and worked with the department till 28.6.2011 and the officers of the management ordered to the workman not to come on duty and they also refused to give their due salary/payment without any written notice and asked them to work with the some contractor as labourer. The management passed out this message through letter. The workman refused to do the work under contractor because the workman was the employee of BSNL as per the settlement. The workman gave a letter to DET BSNL Faridkot and telegramme to Chief Labour Commissioner, Chandigarh. The workman gave an application regarding his illegal termination to Assistant Labour Commissioner and assistant Labour Commissioner sent a letter on 1.8.2012 under failure of conciliation to the Ministry of Labour and hence the present reference. It is further submitted by the workman that he never refused to do his work as a permanent employee of the BSNL as a helper lineman but he demanded his salary, EPF, ESI and increased salary. It is prayed by the workman that he may be reinstated in service as on same post with continuity of service with all consequential benefits. Along with claim statement workman also filed documents.

3. The management in reply have taken preliminary objections that workman was never appointed by the management against any regular post and workman did not work on any duty as casual/regular employee and he never worked as helper lineman in BSNL and he might have worked with some contractor. The workman never engaged by the management, therefore, there is no question of his termination. It is further submitted by the management that the workman has not disclosed that a criminal case has been filed and the same is pending against the workman. It is further submitted that the claim statement is liable to be dismissed for non-joinder of necessary parties. The workman was working under M/S Bakshish Singh, Malwal Road, Ferozepur(Contractor) and the same has not been arrayed as respondent. The management specifically pleaded that workman was never appointed by the management against any regular post or by following any recruitment procedure and there is no relationship of master and servant. The conciliation officer held a discussion on 16.11.2009 and the concerned officer was not the competent authority to sign the settlement. During conciliation proceedings, the conciliation officer persuaded the above representative of the management that the worker be given work through contractor and it was not the intention that the worker is to be re-employed as worker of the regular establishment of BSNL and there was no decree to re-employee the said workman on regular basis. The petty nature works of the outdoor plant of the management were awarded to the contractors. The workman was found working with the contractor and getting salary from the contractor prior to June 2011. It is pleaded that management is committed to comply with the implementation of minimum wages act and ready to assist the applicant in this regard. The workman instead of adopting proper procedure for increased wages went on sabotaging the services and threatening the BSNL employees to get the revised payment from the contractor on the basis of revised labour rates. The BSNL authorities reported to the police authorities against sabotage of service and threatening to the BSNL employees and police registered DDR No.16 dated 20.6.2011 under Section 427 and 506 of IPC and the criminal case is pending against the workman in the court of Chief Judicial Magistrate Faridkot. It is also submitted that thereafter workman approached the Labour Commissioner Chandigarh in the capacity of contractor labour and claimed his arrears from Shri Bakshish Singh Malwal Road Ferozepur(Contractor) and the management helped the workman in getting the wages from the above contractor according to minimum wages act.. It is prayed by the management that as the workman was never employed by the management therefore, there is no question of the termination and reinstatement of the workman and prayed for dismissal of the claim statement.

4. In evidence, the workman filed his affidavit Ex.W1 and also relied on documents Ex.W2 to w11. In rebuttal the management filed the affidavit Ex.M1 of Shamsher Bahadur Singh DET Faridkot who also relied on documents Ex.M2 to M7. Both the witnesses were cross-examined by the parties.

5. I have heard the parties, gone through the evidence and record.

6. The workman Bhupinder Singh in oral evidence appearing as WW1 in cross-examination admitted that he was not given any appointment letter as helper line man by the BSNL. This witness further stated that he filed complaint

before the A.L.C. (Central) in 2008 and settlement was arrived at that he will be taken in service through the contractor Mr. Bakhshish Singh. This witness further stated that he filed complaint against the BSNL and not against any contractor. He further admitted the contents of the documents Ex.W2 to W11.

7. MW1 Shamsher Bahadur Singh DET BSNL Faridkot in cross-examination stated that workman made a complaint for not giving minimum wages. M5 is the document pertaining to the complaint of the workman in pursuance of the workman complaint arrear was paid and by order M6 the compensation was paid by the contractor. BSNL was the party but the compensation was paid by the contractor and not by the BSNL. Ex.W4 is the settlement before Deputy Chief Labour Commissioner. This witness further stated in cross examination that “ we do not engage directly. All workers are called for work through contractor only. Contractor submit the bill and the management clear the same”.

8. The management submitted document Ex.M2 photocopy of agreement for maintenance of O/D Plant of Faridkot between M/S Bakhshish Singh contractor Ferozepur City and the DET (Planning) O/o General Manager Telecom, Ferozepur, Ex.M3 photocopies of register of contractor along with muster roll, deposit of EPF, along with list of worker running into 90 pages, Ex.M4 letter dated 19-12-2011 from Labour Enforcement Officer (Central) Chandigarh written to the contractor M/S Bakhshish Singh regarding arrear of less payment made by the contractor of the 16 workmen on account of minimum wages and for making the payment immediately to the workers for the month of October 2010 to March 2011, Ex.M5 arrear in r/o the labour, Ex.M6 is the decision of the Regional Labour Commissioner(C) Chandigarh dated 23-07-2012 under section 20(3) of the Minimum Wages Act, 1948 passed in claim application no.50 of 2012 against M/S Bakhshish Singh contractor and General Manager,BSNL Ferozepur Cantt. In this order it is mentioned that opponents directed to deposit the amount of Rs.8000/- through demand draft in favour of the workmen within 30 days and Ex.M7 is the photocopy of cheques issued to workmen by the contractor for the amount of Rs. 500/- each. In compliance of the order Ex.M6. From the above it is clear that the amount of compensation was paid by the contractor not by the BSNL i.e. management.

9. Thus in view of the facts and circumstances of the case, the workman was not the employee of the BSNL and he was the employee of the contractor M/S Bakhshish Singh who paid him the wages in terms of the contract/agreement placed on the record by the management and there is no question of reinstatement in service for the workman by the management w.e.f 28-6-2011. It is further observed that the settlement dated 16-11-2009 (Ex.W4) before the Conciliation Officer and Deputy Chief Labour Commissioner(Central) Chandigarh between the workman and the management of BSNL shall be given due regard.

10. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

16.06.2016

S.P. SINGH, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1308.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 88/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/06/2016 को प्राप्त हुआ था।

[सं. एल-40012/84/2012-आई आर (डीयू)]

पी. के. वेनुगोपाल, डेस्क अधिकारी

New Delhi, the 23rd June, 2016

S.O. 1308.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 88/2012) of the Central Government Industrial Tribunal Cum Labour Court No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 22/06/2016.

[No. L-40012/84/2012-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH.**

Case No. ID No 88 of 2012, Reference No. L-40012/84/2012-IR (DU) dated 21.01.2013.

Shri Kuku Singh son of Shri Maghar Singh, Resident of Society Nagar, back side Jail, Ralan wal Road, Tehsil & District Faridkot.

...Workman

Versus

1. The General Manager, Telecom, BSNL, Bharat Nagar Chowk, Ferozepur.
2. The Chief General Manager, Telecom, BSNL Punjab Circle, SCO No.102-103, Sector-34A, Chandigarh.
3. DET, BSNL Faridkot Cantt (PB).
4. SDO(P), BSNL Faridkot Cantt. (PB).

...Respondents

Appearances :

For the Workman : Shri Rohit Garg Advocate.

For the Management : Shri D.R. Sharma Advocate.

AWARD

Passed on: -16-06-2016

Government of India Ministry of Labour vide notification No. . L-40012/84/2012-IR (D-U) dated 21.01.2013 the Central Govt. has referred the following dispute to this Tribunal for adjudication:

“Whether the demand of Shri Kuku Singh son of Shri Maghar Singh against the CGM Telephone, BSNL, Sector 34, Chandigarh/General Manager, BSNL Ferozepur/DET/SDE, BSNL, Faridkot for reinstatement in service w.e.f. 28.6.2011 is just valid and legal? If so, what benefits the workman is entitled for and what directions are necessary in the matter?”

2. Brief facts of the case according to the workman are that he was working in BSNL as helper lineman since 2000 in telephone exchange Faridkot regularly without any break. Earlier the management stopped his work including some other employees without giving any notice and workman filed complaint on 20.11.2008 with the Assistant Labour Commissioner, Chandigarh and presented a demand notice under Section 2K. A settlement dated 16.11.2009 arrived at before the ALC between the workman and the BSNL over the issue of termination of services and the Chief General Manager BSNL Chandigarh agreed to re-employ the workman with immediate effect on the same service conditions applicable to him before his termination. In view of the settlement, the workman and other persons joined on 18.11.2009 and worked with the department till 28.6.2011 and the officers of the management ordered to the workman not to come on duty and they also refused to give their due salary/payment without any written notice and asked them to work with the some contractor as labourer. The management passed out this message through letter. The workman refused to do the work under contractor because the workman was the employee of BSNL as per the settlement. The workman gave a letter to DET BSNL Faridkot and telegramme to Chief Labour Commissioner, Chandigarh. The workman gave an application regarding his illegal termination to Assistant Labour Commissioner and assistant Labour Commissioner sent a letter on 1.8.2012 under failure of conciliation to the Ministry of Labour and hence the present reference. It is further submitted by the workman that he never refused to do his work as a permanent employee of the BSNL as a helper lineman but he demanded his salary, EPF, ESI and increased salary. It is prayed by the workman that he may be reinstated in service as on same post with continuity of service with all consequential benefits. Along with claim statement workman also filed documents.

3. The management in reply have taken preliminary objections that workman was never appointed by the management against any regular post and workman did not work on any duty as casual/regular employee and he never worked as helper lineman in BSNL and he might have worked with some contractor. The workman never engaged by the management, therefore, there is no question of his termination. It is further submitted by the management that the workman has not disclosed that a criminal case has been filed and the same is pending against the workman. It is further submitted that the claim statement is liable to be dismissed for non-joinder of necessary parties. The workman was working under M/S Bakshish Singh, Malwal Road, Ferozepur (Contractor) and the same has not been arrayed as respondent. The management specifically pleaded that workman was never appointed by the management against any regular post or by following any recruitment procedure and there is no relationship of master and servant. The

conciliation officer held a discussion on 16.11.2009 and the concerned officer was not the competent authority to sign the settlement. During conciliation proceedings, the conciliation officer persuaded the above representative of the management that the worker be given work through contractor and it was not the intention that the worker is to be re-employed as worker of the regular establishment of BSNL and there was no decree to re-employee the said workman on regular basis. The petty nature works of the outdoor plant of the management were awarded to the contractors. The workman was found working with the contractor and getting salary from the contractor prior to June 2011. It is pleaded that management is committed to comply with the implementation of minimum wages act and ready to assist the applicant in this regard. The workman instead of adopting proper procedure for increased wages went on sabotaging the services and threatening the BSNL employees to get the revised payment from the contractor on the basis of revised labour rates. The BSNL authorities reported to the police authorities against sabotage of service and threatening to the BSNL employees and police registered DDR No.16 dated 20.6.2011 under Section 427 and 506 of IPC and the criminal case is pending against the workman in the court of Chief Judicial Magistrate Faridkot. It is also submitted that thereafter workman approached the Labour Commissioner Chandigarh in the capacity of contractor labour and claimed his arrears from Shri Bakhshish Singh Malwal Road Ferozepur(Contractor) and the management helped the workman in getting the wages from the above contractor according to minimum wages act.. It is prayed by the management that as the workman was never employed by the management therefore, there is no question of the termination and reinstatement of the workman and prayed for dismissal of the claim statement.

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8. The management submitted document Ex.M2 photocopy of agreement for maintenance of O/D Plant of Faridkot between M/S Bakhshish Singh contractor Ferozepur City and the DET (Planning) O/o General Manager Telecom, Ferozepur, Ex.M3 photocopies of register of contractor along with muster roll, deposit of EPF, along with list of worker running into 90 pages, Ex.M4 letter dated 19-12-2011 from Labour Enforcement Officer (Central) Chandigarh written to the contractor M/S Bakhshish Singh regarding arrear of less payment made by the contractor of the 16 workmen on account of minimum wages and for making the payment immediately to the workers for the month of October 2010 to March 2011, Ex.M5 arrear in r/o the labour, Ex.M6 is the decision of the Regional Labour Commissioner(C) Chandigarh dated 23-07-2012 under section 20(3) of the Minimum Wages Act, 1948 passed in claim application no.50 of 2012 against M/S Bakhshish Singh contractor and General Manager, BSNL Ferozepur Cantt. In this order it is mentioned that opponents directed to deposit the amount of Rs.8000/- through demand draft in favour of the workmen within 30 days and Ex.M7 is the photocopy of cheques issued to workmen by the contractor for the amount of Rs. 500/- each. In compliance of the order Ex.M6. From the above it is clear that the amount of compensation was paid by the contractor not by the BSNL i.e. management.

9. Thus in view of the facts and circumstances of the case, the workman was not the employee of the BSNL and he was the employee of the contractor M/S Bakhshish Singh who paid him the wages in terms of the contract/agreement placed on the record by the management and there is no question of reinstatement in service for the workman by the management w.e.f 28-6-2011. It is further observed that the settlement dated 16-11-2009 (Ex.W4) before the Conciliation Officer and Deputy Chief Labour Commissioner(Central) Chandigarh between the workman and the management of BSNL shall be given due regard.

10. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

16.6.2016

S.P. SINGH, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1309.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 711/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/06/2015 को प्राप्त हुआ था।

[सं. एल-12012/227/99-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 23rd June, 2016

S.O. 1309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 711/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 23/06/2016.

[No. L-12012/227/99-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sri Kewal Krishan, Presiding Officer

Case No.711/2005

Registered on 25.08.2005

Sh. M. M. Sondhi S/o Sh. Mehngo Ram Workman, C/o Sh. Tek Chand Sharma 25, Sant Nagar, Civil Lines, Ludhiana.

...Applicant

Versus

1. The Management Bank of Baroda, Regional Office, Punjab, Chandigarh & J & K, Bank Square, Sector 17, Chandigarh.

...Respondent

APPEARANCES :

For the workman : Workman in person

For the Management : Management Ex parte

AWARD

Passed on:- 11.01.2016

Vide Order No.L-12012/227/99-IR(B-II), dated 24.12.1999 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Bank of Baroda in awarding the punishment of dismissal from services to Sh. M.M. Sondhi S/o Sh.Mehnga Ram is legal and justified? If not, what relief the concerned workman is entitled to and from which date?”

In response to the notice, the workman appeared and submitted statement of claim to which written reply was filed.

The facts emerging are that workman was posted as Peon with the respondent Bank on 24.8.1981 and was promoted as Clerk on 28.8.1991. On 4.9.1993 Demand Draft No.DD/91/H/266913 dated 28.8.1993 in favour of Manjit Singh for Rs.7,60,500/- was presented for clearance at Bangalore and was issued from Town Hall Branch, Amritsar. The matter was suspicious and on inquiry, it was found that it was not issued by the said branch and actually the said draft was issued for Rs.25/- favouring Guru Nanak Dev University by Clock Tower Branch, Ludhiana. Matter was reported to the police and the workman along with others were arrested.

Two more drafts bearing No.DD/92/8 231025 dated 23.8.1993 issued by the Phagwara Branch for a sum of Rs.20/- and Draft No.DD/92/8 230058 dated 18.8.1994 issued by the Clock Tower Branch, Ludhiana for Rs.3 lacs were recovered.

The original purchaser reported the loss of draft for Rs.3 lacs but the same was recovered from the workman by the police.

The workman was charge sheeted for his misconduct. The charge sheet was supplied to him along with the relevant documents and list of witnesses. He was allowed to engage a defence representative. The inquiry was conducted in his presence as per rules and was given full opportunity to defend his case. He even made confessional statement before the police having stolen the demand drafts. The Inquiry Officer after appreciating the evidence, submitted an inquiry report dated 18.2.1995 holding that the charges are proved against him. On the basis of the inquiry report, a show-cause notice was issued to him and after hearing him, he was dismissed from service.

Now, according to the workman, he was wrongly suspended and the order for appointing the Inquiry Officer was not supplied to him. The list of witnesses and the documents were not supplied to him as much as the Inquiry Officer examined him first and the report is not based on any evidence and as such the report is illegal. The punishment awarded on its basis is also illegal and consequently the order passed by the appellate authority is also not sustainable.

On the other hand, the stand of the respondent management is that the inquiry was held as per procedure after giving full opportunity to the workman to defend himself and finding him of 'gross misconduct', his services were terminated.

The workman appeared in the witness box and filed his affidavit reiterating the stand as taken by him in the statement of claim.

The evidence of the management was closed vide order dated 16.9.2008.

The management was proceeded against ex parte vide order dated 20.4.2015.

The enquiry was held to be fair and just vide order dated 12.05.2015. The said order dated 12.05.2015 has not been challenged by the workman and has attained finality.

I have heard the workman, whether the punishment awarded to the workman is proper and justified.

It was argued that workman has not involved in any fraud and harsh punishment of dismissal from service has been awarded to him and the punishment be reduced. Suffice to say that bank officials deal with the public money and the public depose trust in them. They are supposed to discharge the functions with upmost care and caution. But in the present case a forged draft of sum of Rs. 7,60,500/- was recovered from the workman. He was found in possession of another draft for Rs.3,00,000/-, which was stolen. These acts on the part of the workman itself shows that he was indulging in illegal and unfair acts while working as an employee of the bank and in these circumstances, no other view can be taken than taken by the disciplinary authority in awarding the punishment.

Being so, the punishment awarded to the workman is upheld. In result the reference is answered that the awarding of punishment of dismissal from service to the workman is legal and justified and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1310.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 880/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.06.2015 को प्राप्त हुआ था।

[सं. एल-12012/144/2000-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the, 23rd June, 2016

S.O. 1310.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 880/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 23.06.2016.

[No. L-12012/144/2000-IR (B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sri Kewal Krishan, Presiding Officer

Case No. I. D. No. 880/2005

Registered on 12.9.2005

Sh. R.K. Arora, Clerk/Godown Keeper, 454, E-6, Harinagar, Rohtak-124001.

...Petitioner

Versus

The Management, Punjab National Bank, Zonal Office, Sector 17-B, Chandigarh(Through its Zonal Manager).

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Rana, Adv.
For the Management : Sh. N.K. Zakhmi, Adv.

AWARD

Passed on:-06.01.2016

Vide Order No.L-12012/144/2000-IR(B-II), dated 18.01.2001 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Punjab National Bank in terminating the service of Sh. R.K. Arora, Clerk w.e.f. 8.8.1997 by treating his absence from duty as voluntary cessation of service is legal and justified? If not, what relief is the disputant workman entitled to?”

The facts, in brief, are that the workman was posted as Clerk in New Bank of India, which was amalgamated with Punjab National Bank in 1993. A policy was issued regarding the transfer of employees, which was challenged in the Court. The workman was working at regional office, Rohtak. He was transferred to Hisar in violation of the guidelines. He made representation dated 15.03.1997, which was rejected. An industrial dispute was raised by the Union, and during the pendency of the proceedings, management issued a letter dated 9.7.1997 that workman has failed to join the duties and asked him to join the duty, failing which he would be treated as voluntary retired from service w.e.f. 8.8.1997. Consequently the bank terminated his services vide order dated 14.8.1997.

The workman has pleaded that the notice dated 9.7.1997 and the order passed on 14.8.1997 are illegal and arbitrary and against the rules, and therefore, termination order is liable to be set aside and he is deemed to be in service and the respondent-management be directed to reinstate him in service with back-wages.

The bank filed written statement pleading that the workman absented himself from duty for a period of more than 90 consecutive days and accordingly a notice dated 9.7.1997(Annexure I), under para 17 of the Bipartite Settlement, for voluntary retirement was issued. The notice was served on him on 17.7.1997. The workman neither joined his duties nor submitted any explanation for remaining absent within the stipulated period of 30 days and accordingly the Competent Authority treated him as having voluntarily retired from service vide order dated 14.8.1997. That the said order is legal and valid being as per bipartite settlement.

During the pendency of the reference, the workman died and his wife Smt. Archana Arora appeared in the witness-box and filed her affidavit supporting the case of the workman.

On the other hand, Sh. M.K. Gulati was examined by the respondent-bank.

I have heard Sh. R.P. Rana for the workman and Sh. N.K. Zakhmi for the management and perused the file.

The admitted facts are that the workman was employed as Clerk with the respondent-bank and was posted at Rohtak from where he was transferred to Hisar. He made representation dated 15.3.1997 regarding his transfer which was not accepted vide letter dated 30.05.1997. The workman did not join the duty and raised an industrial dispute. Since the workman did not join the duty, he was served with a show-cause notice dated 9.7.1997(Annexure 1), as per para 17(a) of the Bipartite Settlement, and it reads as follow:-

“Your attention is drawn towards Zonal Office, Chandigarh registered A.D./Courier letter dated 18.2.1997 advising you to report for duty at ours on or before 3.3.1997 but nothing has been heard from your side.

You are hereby again advised to report for duty at Regional Office Hisar within 30 days of this notice in terms of para 17(A) of the Bipartite Settlement. You are also advised to submit your clarification for your absence from duty within this notice period.

In case you fail to join your duty to this office within 30 days of this notice, we will come to a conclusion that you are not interested in bank service and you will be deemed to have voluntarily retired from the Bank's service on the expiry of this notice.”

When the workman did not respond to this notice, an order dated 14.8.1997(Annexure III) was passed and he was treated as voluntarily retired from bank service w.e.f. 8.8.1997. The relevant portion of Annexure-III read as follow:-

“Please report to this office registered/AD letter dated 9.7.1997 vide which a notice was given to you in terms of section 17(a) of 5th Bipartite Settlement instructing you to join your duties within 30 days and submit your clarification for your absence from duty within the notice period. In response to our above notice neither you joined your duties nor submitted any clarification for your absence from duty.

As you have failed to join your duties within the notice period and despite to various letters it clearly shows that you have no intention to continue in bank service any more.

Keeping in view the above facts and in view of the notice dated 9.9.1997 under section 17(A) of 5th Bipartite settlement you have been treated voluntarily retired from bank service w.e.f. 8.8.1997.”

A perusal of the notice dated 9.7.1997(Annexure-1) and the letter dated 14.8.1997(Annexure-III) shows that he was served with a show cause notice asking the workman to join the duty within 30 days of the notice failing which he was deemed to be voluntarily retired from bank service; and when workman did not respond, he was treated as voluntarily retired from bank service vide order dated 14.8.1997.

Para 17 of the Bipartite Settlement read as follow:-

Voluntary Cessation of Employment :

(i) *When an employee absents himself from work for a period of 90 or more consecutive days without prior sanction from the Competent Authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up employment in India or outside, the management at any time thereafter may give a notice to the employee at his last known address as recorded with the Bank calling upon him to report for work within 30 days of the date of notice.*

Unless the employee reports for work within 30 days of the notice or gives an explanation for his absence within the period of 30 days satisfying the management inter alia that he has not taken up another employment or avocation, the employee shall be given a further notice to report for work within 30 days of the notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

In the event of the employee submitting a satisfactory reply, he shall be permitted to report for work thereafter within 30 days from the date of expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules/conditions of service.

If the employee fails to report for work within this 30 days period, then he shall be given a final notice to report for work within 30 days of this notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.”

A perusal of para 17 of the Bipartite Settlement shows that if any employee absents from work for a period of 90 days or more consecutive days, he is to be given a notice calling upon him to report for work within 30 days of the notice; and if he fails to report, he was again to be given a notice asking him to report for duty within 30 days of the notice failing which he would be deemed to have voluntarily vacated the employment on the expiry of the said notice; and further if the employee again fails to report for work within the stipulated period of 30 days, he is to be given a final notice to report for work within 30 days failing which the employee is deemed to have voluntarily vacated the employment. Thus, the Bipartite Settlement envisages that if employee remains absent for 90 consecutive days, he is to be given notice of 30 days each thrice before treating him as having voluntarily vacated the office.

But, in the present case only one notice dated 9.9.1997(Annexure-I) was issued, as proved and pleaded by the respondent-bank, straightway mentioning therein that if workman failed to join the duty within 30 days, he would be deemed to have voluntarily retired from service. But the management has failed to serve the separate notices as envisaged under the Bipartite Settlement and only the notice dated 9.9.1997(Annexure-I) was served; and thereafter,

the management passed the order on 14.8.1997(Annexure-III) treating the workman as voluntarily retired from bank service w.e.f. 8.8.1997, which is not legal and valid being passed in violation of the Bipartite Settlement.

As per calculations made from para 17 of the Bipartite Settlement, the workman was entitled to 90 days time to join the duty before passing of the order of having voluntarily retired but the management has given only 30 days time to the workman which is illegal and consequently the order dated 14.08.1997(Annexure III) is not sustainable.

It may be added that in the notice dated 9.9.1997(Annexure-I), it is mentioned that a registered A.D./courier letter dated 18.2.1997 was issued to the workman for joining the duty, but the said notice has neither been pleaded nor proved on the file and it cannot be said that notice dated 18.2.1997 was issued and served on the workman. Since it is not proved that the notice dated 18.2.1997 was issued to the workman; and it is only pleaded that notice dated 9.7.1997(Annexure-I) was issued to the workman, it is to be held that only notice dated 9.7.1997(Annexure-I) was issued, which is not legal as stated above.

As stated above, the workman died during the pendency of the reference and as per Section 10(8), the proceedings will not lapse on that account.

In result the reference is answered holding that the action of the management of the respondent-bank in terminating the service of the workman Sh. R.K. Arora w.e.f. 8.8.1997 is illegal and unjustified and the workman is entitled to all the pay and other benefits w.e.f. 8.8.1997 till the date of death. Since the workman has died, the pecuniary benefits, accrued be paid to her widow Smt. Archana Arora, who shall receive the same on her behalf and on behalf of the other legal heirs of the deceased. The bank shall also pay interest @ 6% per annum on the accrued amount from the due date till realization and to further sanction pensionary benefits to the widow of the deceased if admissible under the law.

If the bank fails to make the payment within 6 months of the publication of the award, the bank shall pay interest @ 9% per annum from the due date till realization.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1311.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 8/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.06.2015 को प्राप्त हुआ था।

[सं. एल-12011/29/1993-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 23rd June, 2016

S.O. 1311.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/1994) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 23/06/2016.

[No. L-12011/29/1993-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 8/1994

Employer in relation to the management of Central Bank of India, Patna

AND

Their workman

Present: Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers

: Shri Nitin Singh, Adv.

For the workman .

: None

State : Jharkhand.

Industry : Banking

Dated : 22/02/2016

AWARD

By order No. L-12011/29/1993-IR(B-II) dated 10/02/1994, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“ Whether the action of the management of Central Bank of India, Patna in deducting one day’s wages for 07.12.92 in respect of Shri R.N.Dubey, Clerk and Shri Gopal Gond, Sub-Staff, Jamshedpur Branch is justified? If not, what relief, are these workman entitled?”

2. After receipt of the reference, both parties are noticed. Though they took steps for certain dates, Subsequently did not take any interest in the case by the workman. It is resumed that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed..

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1312.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 106/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/06/2016 को प्राप्त हुआ था।

[सं. एल-12011/66/2002-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the, 23rd June, 2016

S.O. 1312.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 106/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 23/06/2016.

[No. L-12011/66/2002-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD****IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D.ACT, 1947.****Ref. No. 106 of 2003**

Employers in relation to the management of UCO Bank , Giridih Branch

AND

Their workman

Present: Sri Ranjan Kumar Saran, Presiding officer**Appearances:**

For the Employers. : Shri D.K.Verma, Advocate

For the workman. : Shri D.Mukherjee, Advocate

State : Jharkhand

Industry: Banking

Dated : 24/05/2016

AWARD

By Order No.L-12011/66/2002-IR (B-II), dated.12/08/2002, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication.

SCHEDULE

“Whether the action of the management of UCO Bank,Giridih Branch in terminating the service of S/Shri Manoj Kumar Prasad and Awadh Bihari Prasad without adhering to the provisions of I.D Act, 1947 is fair and justified? If not, what relief the concerned workmen are entitled to?”

2. This case is received from the Ministry of Labour by Industrial Tribunal, Patna on 05.09.2002/ 01.07.2003. After receipt of the reference , both parties are noticed. Workman files their written statement on 01.08.2003 before the Industrial Tribunal, Patna. Thereafter as per Ministry's letter No. L-12011/66/2002 IR (B-II) dated 13.06.2003/18.07.2003, this case transferred to this Tribunal, as per letter No. 253/IT-2003 dated 30.09.2003 received by this Tribunal and registered as Ref. 106/2003.
3. After receipt of this reference, fresh written statement filed by the workmen on 14.06.2004. The management also files their written statement -cum-rejoinder on 21.03.2005. Thereafter the workman files their rejoinder & document and examined himself as witness. Management also examined one witness as MW-1namely Bisheshwar Das, Chief manager UCO Bank. Document of workman marked as W-1 to W-2/1.
4. Case of the workmen is that Sri Manoj Kumar Prasad had been working as permanent peon against permanent vacancy since 19.02.1990 continuously till his service was terminated by stopping him from duty w.e.f. 05.05.1997. He had put in more then 240 days attendance in each calendar year and also prior to termination of his service. As well as Sri Awadh Bihari Prasad had been also working as permanent peon against permanent vacancy since 23.01.89 continuously till his service was terminated w.e.f. 20.04.1997, and he had also put in more than 240 days in each calendar.
5. It is also submited that both concerned workmen worked in permanent nature of job against permanent vacancy till then the management were not paying them regular pay scale and other benefits. The concerned workmen represented before the management several times for regular pay scale and other connected benefits of at par with other permanent workmen but without any result.
6. After waiting patiently for reasonable time the concerned workmen started agitating the matter again and again before the management and due to that the management terminated their service by stopping them from coming to service without assigning any reason and without complying mandatory provision of law. Hence Industrial dispute arose.
7. On the other hand the case of the management is that the engagement of the workman were illegal as it was made without following the well established norms for regular appointment such as open advertisement, calling for nomination from the employment exchange and interview etc. and prior permission of the personnel Department of Head Office was a must, for a permanent job.
8. It is also submitted that the workmen engagement were never done in a proper manner and they were engaged orally by the local Branch Manager, who were not competent to do so and said engagement was purely contingent and temporary on day to day basis and no appointment letter were issued to them. Thus their engagement was itself against the established procedure and not againstregular vacancies. More over they were allegedly engaged for serving to give water etc. on contingent basis and it was not a regular engagement and was purely on daily wages basis. Hence there is no question of regularization of services or termination of retrenchment to daily wage earners like the workmen.
9. The claim of the workmen is that they were rendering services to this bank as peon since long and the bank management without any cause and notice removed them from services for which they come to this Tribunal, through reference.
10. On the other hand the bank management submitted and admitted that the workman were working as water boy and rendering services but as per subsequent bank norms the services of the workmen was terminated No doubt the workmen rendered services to the bank continuously but neither any authentic document filed by the workman nor any document marked to prove that he was working continuously for 240 days. The cross examination of Shri Manoj Kumar Prasad ww-1 is pertinent to quote below:-

“ I have no appointment letter to file here. I have also not seen the appointment letter of others co-workman. Bank did not receive my name and the name of my co-workman from employment exchange. I have not seen any paper , that Branch Manager appointed the person regularize him.”

11. Considering the facts and circumstances of this case The bank management are directed to take the workmen as casual or daily wager employee so that he saved from starvation.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1313.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बडोदा के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2 दिल्ली के पंचाट (संदर्भ संख्या 38/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/06/2016 को प्राप्त हुआ था।

[सं. एल-12011/29/2009-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 23rd June, 2016

S.O. 1313.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/09) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 23/06/2016.

[No. L-12011/29/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT - II, DELHI

Present : Shri Harbansh Kumar Saxena

ID. No. 38/09

The General Secretary,
Bank of Baroda Employees Union,
C/o Bank of Baroda, 2nd Floor, Service Branch,
16, Sansad Marg,
New Delhi.

... Workman

Versus

The General Manager(DMR-II)
Bank of Baroda,
Zonal Officer, Bank of Baroda Building,
16-Sansad Marg,
New Delhi.

... Management

AWARD

The Central Government in the Ministry of Labour Vide No. L-12011/29/2009-IR(B-II)) dated 12.05.2009 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Bank of Baroda for Non-payment of pay and allowances to Sh. Anant Vir Jain, Clerk Z.S.Cell, New Delhi for the period from the date of order of removal from service w.e.f. 11.04.2000 by disciplinary authority till he joined his duties on 29.06.2001 in terms of order dated 25.06.2001 of appellate authority is just, fair and legal? What relief the workman is entitled?”

On 01.06.2009 reference was received in this Tribunal. Which was register as I.D No. 38/2009 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman filed claim statement on 9.2.2010. Where-in he prayed as follows:-

“It is, therefore most humbly prayed that the respondent bank may kindly be ordered to make payment of pay and allowances to Sh. Anant Vir Jain, clerk , Z.S.Cell , New Delhi for the period from the date of removal from service w.e.f. 11.04.2000 to 29.06.2001 the date of joining of duties in terms of order dated 26.06.2001 of appellate authority and the claimant may kindly be granted the said relief in accordance with law.”

Against claim statement management filed written statement on 5.3.2012. Through which management prayed as follows:-

Hon’ble Tribunal may kindly be pleased to hold and declare that :

1. The departmental enquiry held by the management was fair and proper and try the same as preliminary issued and in case the Hon’ble Tribunal hold’s otherwise, the management prays for a opportunity to justify the same by adducing additional evidence.
2. The action of the management in terminating workman’s services is just and lawful and that the workman is not entitled defendant to any relief whatsoever.

Against which workmen filed rejoinder on 7.8.2012. Through which he reaffirmed the contents of claim statement.

My Ld. Predecessor has not framed issues but proceeded on the basis of questions of determination mentioned in the schedule of reference.

Workman in support of his case filed affidavit of WW1 as Sh. P.K. Singh on 17.05.2013.

WW1 Sh. P.K. Singh tendered his affidavit on 20.8.2015 and same day he was partly cross-examined. His statement of examination-in-chief and part cross-examination is as follows:-

I tender my affidavit in my evidence as Exh. WW1/A. Which bears my signature at point A and B. I reply upon documents Exh. WW1/1 to Exh. WW1/5.

Objection on the point of Exh. WW1/2 to WW1/5 as the same are photocopies and the original are not produced raised by A/R for the management.

Such objection shall be decided at the time of appreciation of evidence.

XXX:- By Sh. Sanjeev Gupta, Ld. A/R for the management.

I have not brought any documents. Showing that I am General Secretary of Bank of Baroda of Bank of Baroda employee association.

It is correct that a charge sheet was served upon Anant Vir Jain during his service period.

It is correct that Sh. Anant Vir Jain removed from the services on the basis of inquiry.

Anant Vir Jain filed appeal against his removal.

Q.What was fate of appeal?

Ans. Appeal allowed and services of Anant Vir Jain reinstated. Remaining cross-examination deferred to 16.09.2015.

Thereafter several opportunities given to management to cross-examine the workman. But none appeared to further cross-examine him.

On 3.11.2015 I closed the right of cross-examination of management. Then I fixed 7.12.2015 for management evidence. On 19.1.2016 management filed affidavit of Sh. Firoj Kumar Shethy.

On 24.2.2016 I closed the right of evidence of management due to continuous dormancy on the part of management in adducing its evidence and ordered to put up file for argument at 1 P.M..

I have heard the arguments of Ld. A/R for the workman at about 1.00P.M. as none appeared for management and then I reserved the Award. However I afforded opportunity to management to either orally argue or file written arguments before passing of award.

On 25.02.2016 management moved an application for reopening of management evidence and recall of order dt. 24.02.2006. Which has been rejected by me as award has been reserved.

Thereafter Ld. A/R for management argued orally.

On 29.2.2016 Ld. A/R for management filed written arguments contained eight pages.

In the light of Contentions and Counter Contentions I perused the pleadings of claim statement , written statement and rejoinder alongwith evidence of workman as there is no evidence of management.

I also perused the written arguments alongwith the cited rulings which makes it crystal clear that written arguments of management are in 8 pages.

Written argument upto page five are facts of the case.

However Ld. A/R for the management in his written arguments at page 6 and 7 mentioned as follows:-

Judgement of Hon'ble Supreme Court of India relied upon by the management:-

Union of India Vs. B M Jha

(2007)11 SCC 632

Service Law-Promotion –Notional promotion from retrospective date cannot entitle the employee to arrears of salary as the incumbent has not worked in promotional post-Arrears of salary cannot be granted to the respondent in view of the principle of “no work no pay” in case of retrospective promotion.

Arguments :-

1. Workman is not entitled to any wages or salary during the intervening period from date of his removal by the order of Disciplinary Authority w.e.f. 11.04.2000 till he joined duties on 29.6.2001 in terms of order dated 25.06.2001 of Appellate Authority since during this intervening period workman never worked for the management and is not entitled to any salary of wages in terms of “no work, no pay” principle.
2. Moreover the workman has never assailed the part of the order dated 25.06.2001 of disciplinary authority wherein it is ordered that “Mr Anant Vir Jain shall not be entitled to salary and allowances from the date of his removal till he joins duties in terms of this order.” And as such there is acquiescence on part workman with respect to the said order of appellate authority.
3. Because in terms of judgment of Hon'ble Supreme Court of India in the matter of Union of India Vs. B M Jha, it is categorically held that even if a person has been given effect of promotion with retrospective effect, since he has not worked on promoted position retrospectively, he is not entitled to the difference of wages and salary between his previous position and promoted position.
4. Because the ratio of the said judgment is applicable in the instant case as well. In the instant case, the workman has not worked at all and therefore is not entitled to any wages or salary during the intervening period from date of his dismissal and date of his rejoining the duties in accordance with the order of the appellate authority.
5. Because the said order of appellate authority is neither set aside nor modified by any competent authority/Industrial Tribunal/ Labour Court and therefore the same is valid and applicable on the workman.
6. Because in the said order of appellate authority, it is clearly mentioned that “Mr Anant Vir Jain shall not be entitled to salary and allowances from the date of his removal till he joins duties in terms of this order” and the act of rejoining duties by the workman –Mr Anant Vir Jain, signifies that the workman has accepted the said order in toto without any demur and as such at a later stage, he has no legal right to challenge the same.

In view of the aforesaid submissions, the workman is not entitled to any relief much less the relief much less the reliefs prayed for in the prayer clause of the claim.

It is therefore prayed that the claim of the workman be rejected.

It is settled law of Hon'ble Supreme Court as well as all Hon'ble High Courts of all states of India that points of arguments of a party are appreciated in the light of its pleadings alongwith its proved evidence.

No principle of law has ever been laid down either by Hon'ble Supreme Court or by Hon'ble High Court which may authorize to court place reliance on principle of law without evidence of a party. Rather principle of law laid down by Hon'ble Supreme Court etc is applied in case where facts of case are similar to the facts of reported case in which principle has been laid down.

In this background ruling cited in written arguments by Ld. A/R for the management and its photocopy are of no avail to management.

Hence in want of evidence of management and unrebutted evidence of workman as he was not completely cross-examined by management and nothing could be extracted out in his part cross-examination as well as I find dormancy of Ld. A/R for the management in cross-examining the workman. Right of cross-examination has been closed by me on 3.11.2015.

So evidence of workman comes with the category of reliable and credible evidence. Which too is unrebutted hence liable to be relied upon. So that evidence of workman cannot be discarded simply on the basis of beautiful arguments of Ld.A/R for the management.

In these circumstances Question of Determination No. 1 mentioned in schedule of reference is liable to be decided in favour of workman and against management. Which is accordingly decided and claim statement of workman is allowed with direction to management to comply this award in the light of final judgment of appellate authority dated

25.06.2001 to provide the accrued benefits to workman on the basis of order of appellate court. Which have deliberately been withheld by management within period of two months after expiry of period limitation of available remedy against this Award.

In these circumstances reference is liable to be decided in favour of workman and against management. Which is accordingly decided.

Award is accordingly passed.

Dated: 21/3/2016

HARBANSK KUMAR SAXENA, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1314.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 21/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/06/2016 को प्राप्त हुआ था।

[सं. एल-12012/65/2008-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 23rd June, 2016

S.O. 1314.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 23/06/2016.

[No. L-12012/65/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI

Present: Shri Harbansh Kumar Saxena

ID. No. 21/2009

Sh. Shiv Prasad Yadav,
R/o House No.70, Nand Ram Mohalla,
Brahm Puri Gali No. 1,
New Delhi.

Versus

The Chief Manager,
UCO Bank,
Parliament Street Branch 5,
Sansad Marg,
New Delhi-110001.

AWARD

The Central Government in the Ministry of Labour Vide Letter No. L-12012/65/2008 (IR(B-II) dated 10.02.2009 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the workman Sh. Shiv Prasad Yadav is entitled to be reinstated in the services with continuity of services and full back wages if yes, from which date?

On 23.03.2009 reference was received in this Tribunal. Which was registered as ID No.21/2009 and claimant was called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman filed claim statement on 4.6.2009. Wherein he prayed as follows:-

“The Hon’ble Tribunal may graciously be pleased to issue notice to the management, entire proceedings against the workman by the management be quashed and the punishment of dismissal awarded by the Chief Manager (Disciplinary Authority) as well as the order passed by the Deputy General Manager (Appellate Authority) of the management may kindly be set aside and the workman may kindly be reinstated in the services of the management with full back wages.

Pass any further order or orders, direction or directions as may be deemed fit and proper in view of the facts and circumstances of the case.

Against claim statement management filed written statement on 17.11.2009.Through which it prayed as follows:-

“It is therefore respectfully prayed that the statement of claim filed by the claimant is liable for outright rejection. Hence, it is prayed accordingly.”

Against written statement workman filed rejoinder on 28.01.2010. Through which he reaffirmed the contents of claim statement.

On 8.4.2010 My Ld. Predecessor on the basis of pleading of parties framed following three issues:-

1.Whether the departmental enquiry conducted in this case is legal, just and fair and is in accordance with the principle of natural justice. If not, what directions are called for in the case?

2.As per the reference sent by the Government of India in this case?

3.Relief.

Issue no, 1 was ordered to be decided as preliminary issue as well as workman was ordered to adduce his evidence and fixing 4.08.2010.

On 4.08.2010 workman filed his affidavit in his evidence.

After few dates on 28.05.2012 it was detected by Ld. Predecessor that affidavit of workman in his evidence is not confined to enquiry aspect only and he was directed to file fresh affidavit on 8.10.2012.But workman on 6.11.2012 filed his fresh affidavit in his evidence copy of which supplied to management and fixed 20.12.2012 for statement of workman.

On 25.04.2011 examination in chief of WW1 was recorded and his cross-examination was deferred by my Ld. Predecessor.

On 26.06.2013 WW1 was cross-examine and his cross-examination was concluded. Thereafter Ld. A/R for the workman closed the evidence of workman on the instruction of workman.

On 16.10.2014 management filed affidavit of Sh. R.K Kaul in management evidence. Copies of which supplied to Ld. A/R for the workman.

Sh. R.K Kaul tendered his affidavit as MW1 and he was cross-examined and his cross-examination is concluded. Thereafter Management closed its evidence and fixed 18.12.2014 for arguments on preliminary issue on enquiry .

After several dates on 2.09.2015 Ld. A/R for the parties argued on the point of disposal of preliminary issue. Then I fixed 28.09.2015 for order.

On 28.09.2015 I passed detailed order on order sheet decided preliminary issue of enquiry in favour of management and against workman and fixed 15.10.2015 for argument on proportionality of punishment. Which could be concluded on 10.03.2016. Then award was reserved.

Ld. A/R’s in support of their contentions and counter contentions on preliminary issue filed copies of rulings which are on record. Ld.A/R for the workman vehemently argued that misconduct of workman is of absence on duty. Which is of lesser degree. So it requires only minor punishment.

While on the otherhand Ld.A/R for the management replied that plea of illness of workman without medical certificate of Government is not tenable.

In the light of contentions and counter contentions I perused the pleadings and evidence of the parties on record as well as rulings cited on behalf of the parties.

Perusal of which makes it crystal clear that workman took plea of his illness due to which he could not attend duty. He alleged that his illness is supported with medical record. Hence Ld. A/R for the workman stressed that his absence is justified.

While on the other hand Ld. A/R for the management replied that workman remained absent on duty for considerable period without any required medical certificate of Government Doctor. Hence his absence is not at all justifiable and his misconduct is major which requires major punishment.

Rulings cited on behalf of workman are not based on required medical certificate of Government Doctor. While as per normal practice Government offices such banks etc. requires medical certificate of illness of workman of Government Doctor which is wanting in the instant case.

It is relevant to mention here that his Lordship of Punjab & Haryana High Court in Santosh Singh Vs The Punjab State Electricity Board and others 2016 Labour Law Reporter page 353 laid down in following principles “Plea of illness without the medical record is not tenable”.

It is also relevant to mention here that the lordship of Punjab & Haryana High Court in case of Kuldeep Singh Vs. M/s Hindustan Lever 2016 LLR 984 laid down in following principles. Illness when not supported with evidence could not justify absence.

On this count termination of workman is justified.

Against these rulings no rulings on behalf of workman has been filed.

Moreover in the instant case it is also relevant to mention here that workman has become over age during the pending of case and removal of workman in the instant case will suffice the purpose. Because dismissal of the workman will compel the family members of workman to lead their life of starvation in want of dues which may be received by workman in case workman has not been dismissed.

In this background I am of considered view that punishment of workman Sh. Shiv Prasad Yadav is modified from dismissal to removal in the interest of justice.

Management is directed to pay all dues amount which could be provided in case of removal of workman.

Reference is partly decided in favour of workman and partly in favour of management. Which is accordingly decided . Claim statement is partly allowed.

Award is accordingly passed.

Dated: 6/5/2016

HARBANSHP KUMAR SAXENA, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1315.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 65/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/06/2015 को प्राप्त हुआ था।

[सं. एल-12012/86/2005-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 23rd June, 2016

S.O. 1315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/09) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 23/06/2016.

[No. L-12012/86/2005-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI

Present : Shri Harbansh Kumar Saxena

ID. No. 65/09

Sh.Sureshanand,
1/48, Dakshinpuri Extn.,
New Delhi.

...Workman

Versus

The Manager,
Central Bank of India,
Greater Kailash Part-II, New Delhi.

...Management

AWARD

The Central Government in the Ministry of Labour vide Letter No.L-12012/86/2005 (IR)(B-II) dated 22.10.2009 referred the following industrial Dispute to this tribunal for adjudication :-:

“Whether the demand of Sh. Sureshanand, Workman that he has been working in the Central Bank of India continuously w.e.f. 21.2.2000 is legal and justified. If so, whether the action of the management in terminating his services w.e.f. 19.9.2003 is legal and justified. What relief the workman concerned Is entitled to ?”

On 12.11.2009 reference was received in this Tribunal. Which was register as I.D No. 65/2009 and claimant union was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Workman filed claim statement on 8.11.2010. Wherein workman prayed as follows:-

- A. Re-instate the workman in his service/job with full back wages and all benefits which he entitled as per I.D. Act.
- B. Order to release the arrears of salary /wages for work done by the workman since 21.02.2000 and handed over the Generator of the workman or pay its value to the workman.
- C. Any other of further order which this Hon'ble Court deems fit and proper as per the facts and circumstances of this case.

Against claim statement management filed written statement on 26.09.2011. Where-in management prayed as follows:-

As the petition of the petitioner is totally frivolous fictitious , baseless and false petition , the same is not maintainable and deserves to be dismissed. The prayer made by the petitioner is devoid of any merit whatsoever and needs no consideration . The claim made is absolutely baseless and not maintainable. It is therefore, respectfully prayed that the claim made by the petitioner needs no consideration and the case be closed accordingly.

Against written statement workman filed rejoinder on 25.11.2009. Through which workman prayed as follows:

“It is therefore, respectfully prayed that the reply of the respondent bank may kindly be dismissed and the respondent may kindly be directed to reinstate the workman with full wages and other allowances.

My Ld. Predecessor proceeded to decide this I.D on the basis of questions of determination mentioned in the schedule of reference. He fixed 16.10.2012 for filing of affidavit of workman in his evidence.

On 16.10.2012 workman sought adjournment. Which was allowed and adjourned 16.01.2013.

On 16.10.2013 workman filed his affidavit in his evidence and 8.4.2013 was fixed for statement of workman.

Statement of workman recorded by my Ld. Predecessor on 8.4.2013. He was partly cross-examined and his remaining cross-examination was deferred to 13.05.2013.

On 13.05.2013 evidence of WW1 concluded.

Evidence of claimant/workman has been closed and 15.07.2013 was fixed for management evidence.

On 15.07.2013 , 12.08.2013 was fixed for management evidence.

After several opportunities management filed affidavit of Sh. Pradeep Kumar Aggarwal on 11.09.2014.

Copy of which supplied to workman and 10.11.2014 was fixed for tendering of affidavit & cross-examination of management witness.

On 10.11.2014 management sought adjournment. Hence case adjourned to 29.12.2014.

On 29.12.2014 case adjourned to 18.02.2015.

On 18.02.2014 MW1 tendered his affidavit. His cross deferred to 14.04.2015.

On 14.04.2015 case was adjourned to 8.6.2015

On 15.04.2015 case was adjourned to 12.08.2015

On 12.08.2015 case was adjourned to 15.10.2015.

On 15.10.15 case was adjourned to 7.12.2015.

On 7.12.2015 case was adjourned to 11.01.2016 as last opportunity.

On 11.01.2016 this Tribunal closed the right of management evidence and fixed 22.02.2016 for arguments.

On 22.2.2016 management moved an application for setting aside order dated 11.01.2016 .

I have heard the argument of Ld. A/R's for the parties and fixed 2.3.2016 for order.

On 2.3.2016 I rejected the application through detailed order. Fixed 4.4.2016 for arguments.

On 4.4.2016 none turn up on behalf of management .

I heard the workman and reserved the Award.

In the instant case workman Sh. Sureshanand has only adduced his evidence. Through which he proved he has been workman in the Central Bank of India continuously w.e.f. 21.2.2000.

He was cross-examined by Ld. A/R for the management but nothing could be extracted out in his cross-examination which may be favorable to management and damaging to workman. Moreover management inspite of several opportunities adduced its no evidence in rebuttal.

Evidence of workman which is without contradictions and probable hence come within the category of reliable and credible evidence. So demand of workman on the basis of his evidence is legal and justified. Thereafter action of the terminating the service of w.e.f 19.9.2003 is not legal and justified. So question of determination No.1 mentioned in schedule of reference is liable to be decided in favour of workman and against management. Which is accordingly decided.

As question of determination no.1 has already been decided in favour of workman and against management. Hence workman is entitled to relief.

But what relief to be provided to workman. Which is to be decided.

In the light of latest law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages. Which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013)II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000/- (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a workman thus, Compensation of Rs. 50,000/- (Rs. Fifty thousand only) by way of damages as compensation to Workman/Claimant by Management shall be paid after the expiry of period of limitation of available remedy against this Award. That will meet the ends of justice.

Reference is liable to be decided in favour of workman and against management. Which is accordingly decided and claim statement is allowed.

Award is accordingly passed.

Dated:-30.05.2016

HARBANSK KUMAR SAXENA, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1316.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 15/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/06/2015 को प्राप्त हुआ था।

[सं. एल-12011/93/2008-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the, 23rd June, 2016

S.O. 1316.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 23/06/2016.

[No. L-12011/93/2008-IR (B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI

Present : Shri Harbansh Kumar Saxena

ID. No. 15/2009

The General Secretary,
Central Bank of India Workers Union,
Link House Bahadur Shah Zafar Marg Press Area,
New Delhi-110002.

Vs.

Regional Manager,
Central Bank of India,
Regional Officer at Railway Road Shahdra,
Delhi-110032.

AWARD

The Central Government in the Ministry of Labour Vide Letter No. L-12011/93/2008(IR(B-II) dated 6.02.2009 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Central Bank of India, New Delhi (i) In recovering w.e.f 1.10.2007 the payment of HRA , CCA and halting allowances paid to employees posted at noida and reducing the rate of HRA & CCA without any notice Section 9A of the ID.Act, 1947; and (ii) Non Payment of Diem allowance to the affected workmen in view of provisions of Bipartite settlement is just fair & legal. To what relief the affected workmen are entitled?

On 23.3.2009 reference was received in this Tribunal. Which was register as I.D No.15/2009 and claimants were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman filed claim statement on 30.09.2009. Where-in he prayed as follows:-

- Direct the Bank to refund the concerned award staff the illegally deducted amount paid towards CCA, HRA & Halting Allowance;
- To direct the Bank Management to pay Per Diem Allowances from 1.10.2007 to the staff posted at NOIDA from Delhi till they are continued at NOIDA.
- Grant any other or further relief to the concerned workmen as this Hon’ble Tribunal may deem fit and proper.

Against claim statement management filed written statement on 25.10.2010. Through which it prayed as follows:-

“In the facts and circumstances explained above and in the interest of justice it is therefore prayed that this Hon’ble Tribunal be pleased to dismiss the present claim petition filed by the workmen in view of the submissions made herein above.”

Any other or further order be also pass in the interest of justice.

Workman on 8.7.2011 filed rejoinder. Where in workman reaffirmed the contents of claim statement.

My Ld. Predecessor has not farmed any issues but proceeded to decided this I.D on the basis of question of determination mentioned in schedule of reference.

Workmen in support of their case filed affidavit on 19.10.2011 of Sh. C.M. Puri. Who tendered his affidavit on 31.05.2013 through his examination-in-chief. Sh. C.M. Puri was cross-examined and his cross-examination concluded on 29.10.2013. Thereafter Workmen closed their evidence .

Management in its support filed affidavit on 28.3.2014 of MW Sh. R.P. Sirohi.

On the same day i.e. 28.03.2014 MW1 Sh. R.P. Sirohi tendered his affidavit.

He was partly cross-examined on 28.05.2014 and fixed 17.06.2014 for remaining cross-examination of management witness. On 20.08.2014 management witness is directed to come with relevant documents. On 14.01.2015 management witness was further cross-examined and his cross-examination was concluded.

Thereafter, Management closed its evidence.

After conclusion of evidence of parties I fixed 12.8.2015 for arguments. On 7.12.2015 written arguments on behalf of workman filed copies of which supplied to Ld. Proxy Counsel for the management.

Fixing 11.01.2016 for either written arguments or oral arguments.

On 11.1.2016 Proxy Counsel for management sought adjournment and which was allowed and adjourned to 15.03.2016. On 15.03.2016 none turn up on behalf of management. Nor written arguments on behalf of management has been filed nor oral arguments has been advanced on management so award was reserved.

Ld. A/R for the workmen filed written arguments. Where-in he mentioned as follows:-

1. That the following industrial dispute was referred to this Hon'ble Tribunal by the appropriate Government vide order dated 6.2.2009 for adjudication under Section 10 of the Industrial Disputes Act, hereinafter referred as the I.D. Act.

“Whether the action of the management of Central Bank of India, New Delhi (10 in Recovering w.e.f 1.10.2007 the payment of HRA, CCA, and halting allowance from the employees at NOIDA and reducing the rate of HRA and CCA without any notice under section 9-A of the ID.Act, 1947 and (2) Non-Payment of Diem Allowance to the affected workmen in view of the provisions of Bipartite Settlements is just fair and legal? To what relief the affected workman concerned is entitled to?”

2. The Central Bank workers Union, hereinafter referred to as the Union, filed its statement of claim dated 28.07.2009 claiming to be the recognized majority trade union of the workmen of Central Bank of India. The union submitted therein that historically branches of the Bank Operating in NOIDA were treated since inception as part of Delhi and the Bank used to pay CCA , HRA and Halting Allowacne to the workmen working in NOIDA at par with Delhi.
3. That the industry level Bipartite Settlements also provided that award staff deployed outside the municipal limits of the place of their posting /duty station would be paid Per Diem Allowance but the Bank never paid any Per Diem Allowance to the workmen working at Delhi on their posting at NOIDA on permanent basis or on deputation , which confirms beyond any doubt that the Bank always treated NOIDA as a part of Delhi.
4. That similarly, the award staff working at Faridabad and Gurgoan were paid CCA , HRA and Halting Allowance at Delhi rates and this fact has been admitted by the management vide Exh. No. WW-1/2 & WW-1/3. Incidentally, what is now called NOIDA was earlier part of Ghaziabad District of U.P.
5. That all of sudden and without any notice to the workmen under Section 9-A of the I.D. Act , the management issued Circular bearing No. 2007/08/4967 dated 14.02.2008 (Exh. WW-1/4) for recovery of CCA, HRA to Halting Allowance paid to the staff at NOIDA who were under the control of Regional Office at Delhi.
6. That the Bank , despite service of notice, failed to file the Written Statement in this Hon'ble Tribunal and was therefore, proceeded ex-parte on 5.4.2010. The said order was however, modified by this Hon'ble Tribunal on 25.10.2010 subject to payment of cost of Rs. 2,000.00. The Management thereafter filed its written statement on 16.12.2010, after a delay of about one and half years and admitted in para 5 thereof “that the staff of the bank at Delhi and NOIDA were rotated and inter-changed without any restriction and without any compensation, TA/DA between Delhi and NOIDA .” It was added by the Bank that the change in the matter of HRA and CCA was made in terms of 4th Bipartite Settlement which provided that for the purpose of CCA, the latest available official figures of All India Census shall be taken into account. It also relied upon the decision of the Labour Committee of IBA and stated that the decision taken did not apply only to NOIDA but to several other places like Panvel, Virar, Bhiwandi near Mumbai; Sonepat in Haryana, “Mohali and Panchkula within the radius of Chandigarh and Gandhi Nagar in Gujarat.
7. That the stand of the management was that the decision to recover the CCA, HRA etc. w.e.f. 1.10.2007 was taken by Indian Banks Association (IBA) and it was bound to comply with the same.
8. In the Rejoinder dated 19.02.2011 filed by the Union, the averments made in the Statement of Claim were reiterated and re-affirmed to be correct and those of the management in their written statement were refuted. Sh. C.M. Prui, General Secretary, of the Union deposed on behalf of the workmen and Sh. R.P. Siroha deposed as MW-1 before this Hon'ble Tribunal. In his deposition dated 28.03.2014 , WW-1 re-iterated that the such decisions, of the IBA which violated the statutory provisions were not binding in law on the member Banks , and that mere presence of the Workman Director in the meeting of the Board of Directors of the Central Bank of India did not alter the situation and could not be treated as compliance with Section 9-A of the ID. Act.

9. It is submitted in this Connection that IBA has no authority in law to issue any order to its members to violate the statutory provisions contained in the ID. Act. Moreover, the State Bank of India and Punjab National Bank, which are the largest public sector banks and are also members of IBA, are even now paying HRA, CCA and Halting Allowance to their workman staff posted at NOIDA at Delhi rates. Even the Central of India is making payment of HRA and CCA at Delhi rates to the workman posted at Gurgaon. It is therefore, the submission of the Union that the action of the Bank in recovering CCA, HRA and Halting Allowance paid to workman staff posted at NOIDA from 1.10.2007 and not paying Per Diem Allowance to the staff posted at NOIDA from Delhi is wholly illegal, unjust and in violation of the statutory provisions contained in Section 9-A of the I.D. Act. As NOIDA is not now treated as part of Delhi, workmen deputed from Delhi, either on permanent or on deputation basis, are entitled to the payment of Per Diem Allowance.

10. Sh. Siroha, MW1, admitted in his deposition that IBA is only an association of member banks. He, however, wrongly stated that IBA could issue legally binding orders to the member banks.

11. The Bipartite Settlement provides as under:-
 “ In partial modification of clause 9.13 of the Bi-partial settlement dated 19.10.1996, where the workmen is required to travel within the municipal limits, municipal Corporation including cantonment or panchayat limits, no Haltingallowance is payable. Where the place is outside such limits, the workman will be entitled to batta, provided the places of outstation duty is more than 5 kilometres from the Branch or office where he is working.

12. The well settled law is that any change in the service conditions specified in the Fourth Schedule to the I.D. Act is invalid if the same is not preceded by a notice in terms of Section 9-A to the workmen likely to be effected by such a change. Reliance is placed in this regard on the judgements of the Hon'ble Supreme Court in the case Lokmat Newspapers V/s. Shankar Prasad (1999(2)LLJ-600. In the Lokmat case, the Supreme Court observed as under in para 33:-
 “As far as items 1-9 and 11 are concerned, it becomes obvious that before any such change in the conditions of service of the workmen is to be effected, as a pre-condition for such proposed change, notice under Section 9-A has to be issued, without complying with such pre-condition of notice, proposed change would legally not come into operation.”

Needless to mention that CCA, HRA, Halting Allowance and Per Diem Allowance very clearly and indisputably come under item No.3 of the Fourth Schedule. The action of the Bank therefore in making the recovery w.e.f. 1/10/2007 and not paying Per Diem Allowance from that date to the affected workmen is clearly in violation of Section 9-A of the I.D. Act.

13. Recovery made from the workmen w.e.f. 1/10/2007 is also otherwise bad and untenable in law. Reliance is placed on the judgement of the Punjab & Haryana High Court in the case of Budh Ram V/s, State of Haryana-2009-4-LLJ-699-FB. (copy placed below).

In the light of contentions and counter contentions I perused the pleading of the parties as well as their evidence including contents mentioned in written arguments as well as principles laid down in cited rulings. I am of considered view that following question of determination No. 1:-

“ Whether the action of the management of Central Bank of India, New Delhi (i) In recovering w.e.f 1.10.2007 the payment of HRA , CCA and halting allowances paid to employees posted at noida and reducing the rate of HRA & CCA without any notice Section 9A of the ID.Act, 1947.” is liable to be decided in favour of workmen and against management.

Which is accordingly decided.

As question of determination No. 1 mentioned in schedule of reference already decided in favour of workman and against management so workmen.

So Issue No. 2 which is relating to relief to workmen is also liable to be decided in favour of workmen and against management.

Which is accordingly decided and following required directions are issued to management. Which are as follows:-

- Management is directed to refund the illegally deducted amount paid towards CCA, HRA & Halting Allowances to workmen .
- The Bank Management is directed to pay Per Diem Allowances from 1.10.2007 to the staff posted at NOIDA from Delhi till they are continued at NOIDA.

Award is accordingly passed. Management has to comply the aforesaid directions within two months after expiry of period of available remedy against this Award.

Dated:-5.4.2016

HARBANSHP KUMAR SAXENA, Presiding Officer

नई दिल्ली, 23 जून, 2016

का.आ. 1317.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 69/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/84/2009-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 23rd June, 2016

S.O. 1317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/09) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 23.06.2016.

[No. L-12011/84/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI

Present: Shri Harbansh Kumar Saxena

ID. No. 69/09

The General Secretary,
Indian Bank Employees Union, G-78,
Connaught Circus,
New Delhi.

....Workman

Versus

The General Manager,
Indian Bank, Circle Office, IR Cell,
Upper Ground Floor, World Trade Centre,
Badar Road,
New Delhi-110001.

... Management

AWARD

The Central Government in the Ministry of Labour Vide Letter No. L-12011/84/2009-IR(B-II) dated 24.11.2009 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Indian Bank, Circle Officer, New Delhi in imposing the punishment of Bringing down the basic pay of Sh. P.K. Puri, Special Assistant, Jasola Branch by one stage for a period of one year is just, fair and legal? To what relief the workman is entitled?”

On 4.12.2009 reference was received in this Tribunal. Which was register as I.D No.69/2009 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman filed claim statement on 15.2.2010. Where-in he prayed as follows:-

“That in the facts and evidences as submitted herein above, it is prayer that this Hon’ble Court be graciously pleased to declare the punishment order as illegal, arbitrary and discriminatory and pass such other and /or further orders as may be deemed just and fair”.

Against claim statement management filed written statement on 15.04.2010. Through which it prayed as follows:-

- Dismiss the industrial dispute and uphold the punishment order of Appellate Authority.
- Pass such other or further orders which this Hon’ble Court may deem fit and proper.

Against which workmen filed rejoinder on 11.10.2010. Through which he reaffirmed the contents of claim statement.

My Ld. Predecessor on 5.04.2013 framed following issues:-

1. Whether enquiry conducted by the management was not in consonance with principles of natural justice?
2. Whether punishment awarded to Shri P.K. Puri, is discriminative?
3. As in terms of reference.

Thereafter case was fixed for workman evidence.

Several opportunities given to workman to adduce his evidence but he failed. On 12.01.2015 case is adjourned to 24.02.2015 for workman evidence/management evidence.

On 24.02.2015 management in support of its case filed affidavit of MW1 Sh.Kamta Prasad Jain.

MW1 tendered his affidavit on 20.01.2016. His statement of examination-in-chief is as follows:-

I tender my affidavit. Which bears my signature at point "A" and "B". Affidavit is marked as Exh.MW1/A.

Cross-examination MW1 is marked nil as none is present to cross-examine him on behalf of workman.

I have heard the arguments of Ld. A/R for the management and perused the pleadings and evidence of management only. Claimant has adduced no evidence.

In the instant case workman/claimant adduced no evidence to prove contents of his claim statement. So pleadings without evidence cannot be relied upon as per settled law of Hon'ble Supreme Court.

Moreover statement of MW1 supports the contents of written statement of management as statement of MW1 is unrebutted in want cross-examination. So it comes within category of reliable and credible evidence.

In these circumstances, this Tribunal has no option except to decide the reference in favour of management and against workman.

Which is accordingly decided. Claim statement is accordingly dismissed.

Award is accordingly passed.

Dated:-29.03.2016

HARBANSHEKAR SAXENA, Presiding Officer

शुद्धि-पत्र अधिसूचना

नई दिल्ली, 23 जून, 2016

का.आ. 1318.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय प्रबंधक, बैंक नोट प्रेस के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ केस संख्या सीजीआईटी/एलसी/आर/72/2002) दिनांक 31.03.2016 द्वारा शुद्धि-पत्र अधिसूचना प्रकाशित करती है।

[सं. एल-16012/01/2001-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

CORRIGENDUM TO NOTIFICATION

New Delhi, the 23rd June, 2016

S.O. 1318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes corrigendum of the Award No. (I. D. Case No. CGIT/LC/R/72/2002) dated 31.03.2016 of Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur. Instead of management of Gery Iron Foundry, Jabalpur, it may be read as The Manager, Bank Note Press as shown in the Annexure in the Industrial Dispute. All the rest remain the same.

[No. L-16012/01/2001-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/72/2002

Shri Sajjanlal Ghawri,
114, Laxmi Nagar,
Bhosle Colony, Dewas (MP)

...Workman

Versus

General Manager,
Bank Note Press,
Dewas (MP)

...Management

AWARD

Passed on this 2nd day of March 2016

1. As per letter dated 9-5-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-16012/1/2001-IR(DU). The dispute under reference relates to:

“Whether the action of the management of General Manager, Bank Note Press, Dewas in compulsorily retiring Shri Sajjanlal Ghawri w.e.f. 31-8-2000 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/2. Case of Ist party workman is that he belongs to sweeper caste. His date of death is 25-10-46. The date of his superannuation is 24-10-06. On 8-5-76, he was appointed as labour he submitted declaration on his appointment that he was married, he was promoted to the post of counter and thereafter as examiner. He was compulsorily retired on 31-8-2000. At time of his compulsory retirement, he was drawing salary Rs.3870 inclusive of allowances. Chargesheet was issued to him alleging that his first marriage with Beenabai subsisted, he married second time and concealed this fact in his declaration submitted by him at the time of entry in service constituting violation of Rule 21 of CCS(Conduct) Rules. He denied charges alleged against him. Workman contented that he obtained divorce from his first wife Beenabai in Panchayat of Chavni Valmik, Indore on 21-12-1970. The divorce was obtained as per custom observed since long time in his community. His first wife Beena Bai filed civil suit 752 A/69 before Civil Judge, Class II, Indore. Said suit was withdrawn on 23-12-1970 as withdrawal because of compromise before Panchayat. Workman had a son from his first wife, he was residing with him that workman married with his 2nd wife. That enquiry was conducted against him as per Rule 14 of CCS CCA Rules 1965. Enquiry Officer submitted his report. The punishment of compulsory retirement was imposed against workman. That Enquiry Officer could not decide if the custom of divorce was not prevailing in his community. Said issue could have been decided by Civil Court. The finding given by Enquiry Officer is illegal. The charges alleged against him are not proved. That he replied to 2nd show-cause notice denying findings in the DE. Workman reiterates that punishment of compulsory retirement and deduction of 10 % pension is violation of fundamental rights. On such ground, workman is praying for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 7/2 to 7/7 opposing claim of workman. 2nd party submits that workman was appointed as mazdoor on 8-5-76. He was promoted to the post of counter and thereafter as examiner from 9-9-87. Charge sheet was issued to workman on 15-7-89. The charges against workman were before joining Government Service, he married with Beenabai, out of which the son was born. After sometime, he married with one Sashibai before illegally divorcing Ist wife. That as per Hindu Marriage Act, 2nd marriage is permissible only after divorce from a Court. That in Attestation form, the name of his first wife is not included and only the name of Smt. Shashi Bai was included inspite of warning on the Attestation form. Even in the marriage declaration form dated 6-5-76, he mentioned that he is married and is having one living wife. He suppressed the material facts. Thus he violated Rule 21 of CCS(CCA)Rules and clause 5 of the Schedule of Recruitment rules. 2nd party has further submitted that enquiry was conducted regarding chargesheet issued to workman. Enquiry Officer recorded his findings that charges against workman are proved. Disciplinary Authority after carefully going through the Inquiry report, facts and

circumstances imposed a major penalty of compulsory retirement. The appeal preferred by workman was rejected on 30-5-01. 2nd party reiterates that the charges against workman are proved. He had not disclosed information about his first wife Beena in the declaration form. The misconduct alleged against workman is proved. Punishment of compulsory retirement against workman is proper and legal. That CCS Rule 21 Clause V provides- No person who has entered into or contracted a marriage with any person who has entered into or contracted a marriage with any person having a spouse living or who having a spouse living has entered into or contracted a marriage with any person shall be eligible for appointment to any of the said posts. That workman has performed his 2nd marriage without divorcing his first wife, he was not eligible for appointment in 1976 itself. That workman divorced Beenadevi in 1970 and submitted false and baseless complaints to harass him and he had not hidden anything from department. 2nd party reiterates that punishment of compulsory retirement is proper and legal.

4. Ist party workman submitted rejoinder at Page 8/1 to 8/4 reiterating his contentions in statement of claim.
5. As per order dated 18-9-15, enquiry against workman is found legal.
6. Considering pleadings on record and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|---------------------|
| (i) Whether the action of the management of General Manager, Bank Note Press, Dewas in compulsorily retiring Shri Sajjanlal Ghawri w.e.f. 31-8-2000 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. As per order dated 18-9-15, enquiry conducted against workman is found illegal. As there was no pleading in Written statement to prove misconduct alleged against workman, case was fixed for argument. Management has not participated after finding on preliminary issue. There is absolutely no evidence to prove charges alleged against workman. Incidentally I may also refer to the documents produced by management. Exhibit M-1 is the memorandum of charges. Exhibit M-2 is declaration submitted by workman. M-3 is declaration w.r.t. marriage. Workman had declared that he was married and his one wife was living Exhibit M-4 is reply to chargesheet submitted by workman. Exhibit M-5, M-6 are notices of enquiry. Exhibit M-7 is Enquiry Report, M-8 is the appeal submitted by workman. Enquiry is found illegal mainly on the ground that the statement of witnesses recorded before Enquiry Officer are not produced. After enquiry is found illegal, management has not taken any steps requesting permission to prove misconduct alleged against workman. For want of evidence, it is surprised to says that the charges alleged against workman are not proved. Exhibit W-1 produced by workman shows that civil suit 752/69 filed by Beenabai was dismissed as controversy between them was settled between them out of Court. The suit was withdrawn.

8. Learned counsel for Ist party submitted written notes of argument. 2nd party did not advanced any argument. For reasons discussed above, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 charges alleged against workman are not proved. Management has not taken any steps to adduce evidence after finding in Point No.1. As charges are not proved, punishment of compulsory retirement of workman cannot be sustained. Punishment imposed against workman deserves to be quashed and set aside. As workman has already attained age of superannuation, workman deserves to be allowed salary from the period of compulsory retirement till the date of superannuation. The punishment for deduction of gratuity also deserves to be quashed. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under-:
 - (1) Punishment of compulsory retirement and deduction of gratuity by order dated 27-5-01 is set-aside.
 - (2) 2nd party is directed to pay salary/ wages to workman from date of compulsory retirement i.e. 31-8-00 till the date of his superannuation within 30 days from publication of award.
 - (3) Ist party workman also be allowed retiral benefits as per rules.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

नई दिल्ली, 24 जून, 2016

का.आ. 1319.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ पोस्ट्स, उत्तरांचल सर्किल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 31/08) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-40012/15/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 24th June, 2016

S.O. 1319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 31/08) of the Central Government Industrial Tribunal-cum-Labour-Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Posts, Uttranchal Circle and their workman, which was received by the Central Government on 24.06.2016.

[No. L-40012/15/2008-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID. No. 31/08

Sh. Mahipal Singh S/o Sh. Rati Ram,
Village- Katarpur, P.o. Kankhal,
Haridwar

...Workman

Versus

The Chief Post Master General,
Dept. of Posts , Uttranchal Circle,
GPO Compound,
Dehradun

...Management

AWARD

The Central Government in the Ministry of Labour vide Letter No.L-40012/15/2008(IR)(DU) dated 6.6.2008 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of management of Chief Post Master General, Dehradun, in terminating the services of their workman Sh. Mahipal Singh w.e.f. 08.10.2005 is legal and justified? If not, to what relief the workman is entitled to ?

On 16.6.2008 reference was received in this Tribunal. Which was register as I.D No. 31/08 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 01.09.2008. Through which he prayed as follows:-

A:- Direct the management /Chief Post Master General Dehradun (Uttrakhand) to take the workman back with full back wages and continuity of service. The amount of arrears may kindly be awarded on the basis of the salary plus D.A., H.R.A and other allowances /benefits and adding annual increment for every year;

B:- The cost of conducting these proceedings may also be kindly awarded in favour of workman;

C:- The Hon'ble Court may be pleased to kindly grant any other reliefs which this Hon'ble Court may deems fit and proper in the interest of justice fair play and equity.

Against claim statement management filed written statement on 15.01.2009. Through which management prayed as follows:-

“ It is therefore, prayed that the claim petition of Sh.Mahipal Singh may kindly be dismissed with costs as per the provisions of the departmental rules and regulations.”

Against which workmen filed rejoinder on 30.07.2009. Where-in he prayed as follows:

“It is , therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to allow the claim of the workman/petitioner as per prayer clause of the claim/petition , in view of the submissions made above and in the interest of justice.”

My Ld. Predecessor on 15.09.2009 framed following issues:-

1. Whether the claim of the workman hash be dismissed in view of preliminary objection No. 3 ? OPM.
2. As in terms of reference.
3. Relief.

Workman in support of his case filed his affidavit as WW1 Sh. Mahipal Singh. Which was tendered and cross-examined on same day i.e. 25.05.2011.

Workman in support of his case filed affidavit of Sh. Dharam Pal Singh as WW2. Which was tendered and cross-examined on same day i.e. 16.04.2013.

Workman in support of his case filed affidavit of Sh. Radhey Shyam as WW3. Which was tendered and cross-examined on same day i.e. 16.04.2013.

Management in support of its case filed affidavit of Sh. Anup Singh as MW1. MW1 tendered his affidavit and was cross-examined on same day 14.10.2014.

Management filed written arguments. Contents of written arguments are as follows:-

1. That the workman filed the statement of claim with the contention that he was working in Postal Department under the Union of India and he has joined the management as Care Taker on 01/01/1990 and was posted at the Post Office situated at Inspection House, Haridwar and was getting the salary of Rs. 3195/-.
2. The workman further contended that he was doing duty since 10.00 am to 6.00-7.00 p.m. in daily working hour and also that in case of any VIP movement or any other Higher Officer visited there, then he was doing his duty in night hours also and the night stay in the Inspection house itself executed.
3. The workman further contended that on 08/10/2002, suddenly Sub-Post Master (Haridwar) Uttrakhand orally narrated to him regarding his dismissal/ termination of service with this plea, that as per the oral instruction/direction of the Chief Post Master General, Dehradun your services no more, you never come to post office and there is no need to come to inspection house to attend your duty. Now you are terminated from services.
4. The workman further contended that since 08/10/2005 he made several representation and even made personally to the management requesting to continue his service but no fruitful purpose was served and lastly on 18/12/2006 filed case before the Assistant Labour Commissioner (Central), Dehradun, Uttrakhand for restoration of his services. The workman further contended that the management did not give satisfactory reply. The workman further contended that attempt for reconciliation were made, but management was much adamant regarding to solve the dispute.
5. The workman further contended that Asst. Labour Commissioner suggested both the parties to refer the matter for Arbitration under section 10-A of ID Act but the management was not read and on 19/06/2008, workman received order dated 06/06/2008 with following schedule:-

“Whether the action of the management of Chief Post Master General (Dehradun), in terminating the service of their workman Shri Mahipal Singh w.e.f. 08/10/2005 is legal and justified? If not, to what relief the workman is entitled to?

6. That after receiving the summons of the present claim petition, the management filed its detailed reply thereby denying averments of the statement of claim and made specific preliminary objections and submissions are as under:-

- A. That the present statement of claim filed by the claimant/workman before this Hon’ble Court is false, frivolous, which has no relation with the truth and hence liable to be dismissed.
- B. That the workman/claimant has not approached to this Hon’ble Court with clean hands, the present statement of claim filed by the claimant/workman is false, frivolous and misleading and the workman has suppressed the material facts and information from this Hon’ble Court on which the present statement of claim filed by the workman is liable to be dismissed on the ground of concealment of facts.
- C. That it is respectfully submitted that the workman was working in the department as a part time employee and there is no provision and process for appointment of part time employee and department of post

has neither any service rule nor any service condition for recruitment of part time employees. Hence, no selection procedure is being adopted for engaging any part time employee. Further whenever the services of such worker are required, the department engages them on the need basis and can terminate them whenever the department has an aversion to the quality of their work. There is as such, no requirement to issue any written orders for engagement and termination of a part time employee.

D. The management further contended that workman was working as a part time care taker at Haridwar MDG. It is further submitted that he was not a regular employee in the department of post i.e. a reason that no appointment letter was issued to the workman because the caretaker post is part time post and he is merely a part time employee and his services were terminated owing to his unsatisfactory work in inspection quarter.

E. It is further contended by the management that Mahipal Singh being a part time employee in the department was engaged in the department for five years in the inspection quarter for caring of the officer of the official approaching in inspection quarter. It is further submitted that whenever any VIP residing in inspection quarter in the night hours, only then services of the workman were utilized in cooking food with the help of Group-D Haridwar MDG as and when the requirement arises.

F. It is further submitted that the workman never got any appointment letter from the Chief Post Master. However there is no provision and process for appointment of part time employee and department of post has neither any service rule nor any service condition for recruitment of part time employee . Hence, no selection procedure is being adopted for engaging any part time employee. It is submitted that workman was engaged purely on temporary basis.

G. It is submitted that the case filed by the workman was duly defended by the department before the Assistant Labour Commissioner, Central, Dehradun. It is submitted that the workman was not a regular employee in the Department of Post. The acquaintance roles are in exercise for drawing salary of the Regular employees and ACG-17(Pay Receipt) is prepared for drawing of part time employee. The same was done in case of Sh. Mahipal Singh. The name of the part time employee has also not been mentioned in the pay receipt. Either person, who worked in the department as part time employee his signature are obtained in the ACG-67 for the wages based on the number of days he worked as part time employee, therefore, it cannot be said in any manner that he was drawing a salary as in the case has been done for regular employee.

7. That after completion of pleading, the workman produced himself as WW1 and three other witness namely Radhey Shyam , Dharam Pal and Jaipal as WW2 , WW3 and WW4 . On the other hand management produced only two witnesses as MW1 and MW2.

8. That by leading evidence of WW1 to WW4, the workman could not prove anything on record which could establish that the workman was an regular employee and was working with the management as a regular employee. Even the witnesses produced by the workman has stated very categorically during their cross that “I was working on the post of Extra Department Agent Packer..... I was appointed as a substitute on that post..... I was appointed against a leave vacancy.”

From the abovesaid specific deposition of WW2 to WW4 it is clear beyond all reasonable doubts that they were the part time employee and were getting the wages according to number of days when their services were availed.

9. That even the WW1 Sh. Mahipal Singh has also stated very categorically during his cross-examination that “It is correct that there used to be two separate registers maintained by the management in the office , one for regular employees and the other for casual employees and I used to sign the register of casual employees.

From the said submission of the workman it is clear that the workman since inception was aware of the fact that he is a casual employee (Part time) not a permanent employee. But despite this the workman has made false statement before this Hon'ble Court, hence, the workman is not at all entitled for any relief.

10. That the workman has failed to produce even a single documentary evidence or otherwise which can establish on record that the workman was the regular employee. On the Contrary, the management has successfully proved on record that the workman was a part time employee and his services were being obtained/availed as and when the need arises and further that when his services were not upto the mark and unsatisfactory then his part time services were terminated by the management.

11. That the workman has also failed to establish on record that the termination of the workman from his part time service was illegal , hence, the reference as made by the Ld. Asst. Labour Commissioner stands disproved and deserve to be dismissed with cost.

In the premises aforesaid and in view of the facts and circumstances of the case as explained herein above, it is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to dismiss the claim of the claimant/workman in view of the detailed submissions made herein above, in the interest of justice.

Workman on 31.03.2016 filed written arguments. Contents of written arguments are as follows:-

1. That the workman Shri Mahipal Singh has filed the above noted claim petition and the same is fixed for final argument on 31.03.2016.
2. That the workman working in Postal Department under the Union of India, he has joined the Management as Care Taker (Part-Time) on 01.01.1990 and the workman was posted at the post office situated at Inspection House, Haridwar (Uttarakhand). The workman was getting salary of Rs.3,195/- per month and the same amount has been withdrawn by the workman as a last salary from the management but unfortunately this management also believe in exploitation of poor labour.
3. That the workman was working since 01.01.1990 with the management very sincerely, honestly and with devotion. The workman was doing his duty as a regular employee.
4. That the workman doing his duty since 10.00 a.m. to 6.00 – 7.00 p.m. in daily working hour. In case of any VIP movement or any other Higher Officers visited there, the said workman was doing his duty in night hours also and the night stay in the Inspection House itself executed.
5. That as per the Order of Chief Post General, Dehradun, the workman got service as a Care Taker and he was working since 01.01.1990 till the termination.
6. That on 08.10.2005, suddenly, Sub-Post Master (Haridwar) Uttarakhand orally narrated to workman regarding his dismissal / termination of service, with this plea, that as per the oral instruction / direction of the Chief Post Master General Dehradun your service no more, you never come to Post Office and there is no need to come to inspection house to attend your duty. Now you are terminated from service.
7. That since 08.10.2005, workman made several representation to the management requested to continue his service but no fruitful purpose / answer given by the management.
8. That it is pertinent to mention here that the workman personally got meet so many times with Sub Post Master, Haridwar or as well as Chief Post Master General, Dehradun regarding the termination of workman but both the persons never given the satisfactory answer regarding this.
9. That lastly workman filed case before the Assistant Labour Commissioner (Central), Dehradun (Uttarakhand) on 18.12.2006 for the restoration of his service.
10. That the above said representation has been served to the management to their reply they does not give any satisfactory answer regarding the disputed matter. The disputed matter has been discussed jointly between the workman and the management, but the management was much adamant regarding to solve the dispute.
11. That the humble submissions before this Hon'ble Court, that Assistant Labour Commissioner (Central), Dehradun (Uttarakhand) suggested both the parties to refer the matter for Arbitration under Section 10-A of the I.D. Act, 1947. Undersigned the workman was ready for the abovementioned arbitration but the management was not ready. It is specifically submitted before the Hon'ble Court that the management has declined matter for the arbitration.
12. That on 19.06.2008, the workman received the copy of the order dated 06.06.2008 with following Schedule :
“Whether the action of the management of Chief Post Master General (Dehradun), in terminating the service of their workman Shri Mahipal Singh w.e.f. 08.10.2005 is legal and justified? If not, to what relief the workman is entitled to ?
13. That for the settlement of the dispute, matter is referred to before this Hon'ble Court, vide order dated 06.06.2008 and for the compliance of the same this statement of claim is filed by the deponent.
14. That it is pertinent to mention here that the workman was working since 15 years back and he was getting a salary through pay roll as a regular employee same can be obtain from the Department of Post. It is specifically mentioned before the Hon'ble Court that the management never gives any show cause notice or any type of letter to workman regarding any type of deficiency in his service or any wrongful act done by the workman in his 15 years service career.
15. That it is also respectfully submitted before this Hon'ble Court as per oral direction of Chief Post Master General Dehradun, the workman was terminated from his service by Sub-Post Master, Haridwar (Uttarakhand). It is also submitted that the management never gives in written termination.

16. That it is further submitted here that as per the letter bearing No.45-95/87-SPB-I dated 12.04.1991 issued from Shri T.S. Govindrajan Director (Staff) on behalf of Government of India, Ministry of Communication Department of Post, Dak Bhawan, Sansad Bhawan, New Delhi-110001 to the All Chief Post Master General / Post Master Generals, All Principal, Postal Training Controller, Foreign Mail, Bombay, Director Postal Staff College, Ghaziabad, U.P. and Heads of all other administrative offices regarding the casual labourers (grant of temporary status and regularization) scheme. The above said scheme introduced by the Ministry as per the direction of the Hon'ble Supreme Court of India in the Casual Labourer Scheme which was clearly directed that the temporary status would be confirmed on the Casual Labourer in employment and who was continue to be currently employed and have rendered continuous service of at least one year during the year the must have been engaged for a period of 240 days (206 days) in the case of offices observing five days leave and they also entitled for the other benefits of the employee.

It is further submitted here that the workman Mahipal Singh has been tendered his service more than 14 years as a Caretaker.

17. That the management has been terminated from service without any legal notice and without any information and orally stated by the Sub-Post Master Haridwar, Uttrakhand to the workman that there is no need to come to the post office and further Post Master stated that “*as per the oral instructions/direction of the Chief Post Master, Dehradun, your service no more, you never come post office and also there is no need to come to the Inspection House to attend your duty and as per the Chief Post Master, Dehradun, you are terminated from service*”. After hearing above contend of the Post Master Haridwar, the workman was so shocked and he filed case before the Asstt. Labour Commissioner (Central)/ Dehradun (Uttrakhand) for Conciliation of the dispute between the management and the workman, but the management was failed to settle the matter and the case has been referred to this Hon'ble Tribunal / Court.

It is further stated that the management intentionally and deliberately appointed workman as a part time caretaker. It is important to again stated herein that there is no such type of the provision in the department that the caretaker should be continued as a part time for 14 and 15 years, even though he was performing his duty as a full time workman. The workman was getting salary through his signature which was taken by the department and specifically mentioned in the register, but the management always failed to produce the above said register before this Hon'ble Court. The identity card issued by the management in the name of the workman also exhibited by the workman.

18. That it is specifically stated here that in the cross examination of the management, it is clearly indicating that the workman has done his service upto 15 years and also they admitted that the workman service has been terminated but as per the management reply due to unsatisfactory work in the inspection quarter, workman was engaged as a part time caretaker w.e.f. 10.05.2006 at Inspection Quarter Haridwar, MDG and further stated that he cannot say about the identity card issued to the workman by the management during the ‘Kumbh Mela’ 1998.

19. That it was the illegal and unjustified and against the natural justice, the workman has tendered his service more than 14 years to the management, even though it is an important to mention here that the management maintained a attendance register to obtain the signature of the workman upto 14-15 years and also used to paid salary through the register / pay role and the workman tender his service some time and the officers will come at late night i.e. 10.00 p.m. The management used to be called. The workman used to be called and prepare food for officers. After that the workman has been terminated without any cause or any notice.

20. That since the day of illegal and wrongful termination of the workman, the workman remain un-employee having responsibilities, old ailing mother as well as school going children. Inspite of their best efforts to find a job and are facing starvation.

21. That it is important to stated here that the management intentionally and deliberately issue identity card to the workman and written as a part time caretaker to clarify the part time workman / employee within the definition of section 2(s) of the Act. The law laid down in ‘Kanubhari Maru Versus N.K. Desai’ 1988(1) LLN 1004 by the Gujarat High Court that the part time employee / worker is within definition of workman and it is also law laid down in ‘Yashwant Singh Versus State of Rajasthan & Ors.’ 1989 (59) FLR 607 Rajasthan, by Rajasthan High Court which held that section 2(s) of the Industrial Disputes Act covers a part time employee also.

The term ‘workman’as defined in the clause does not indicate that the workman must be employed at a particular moment of time what is emphasized is that he must be employed in any industrial to do skilled or unskilled, manual or clerical work for higher or reward. The workman as defined in this section means any persons who is employed at any time in an industry. Law laid down in ‘PL Myakr Versus Ami Chand’, 57 BLR 1000.

Law laid down in “Kanhaiya Lal Versus State of Rajasthan & Ors.” that the part time employee be treated within the definition of workman. Further also law laid down regarding the part time workman in 2001(89) FLR (931) Delhi, 2001(89) FLR 430(Bombay) and also 1989 (59) FLR 607 (Rajasthan).

All the aforesaid citation is enclosed herewith for the kind perusal of this Hon'ble Court.

In view of the above said facts and circumstances, the claim of the claimant / workman is very well maintainable and the claimant is entitled for the same as per prayer clause of the claim petition.

In the light of contention and counter contentions I perused the pleadings and evidence of parties on record as well as contents of written arguments and principles laid down in the cited rulings as well as settled law on the point.

Points raised by workman through his written arguments are as follows:-

A) Part time employee will be treated workman

This principle was laid down by Hon'ble Bombay High Court in case of

- 1) P.L. Myakar Vs. Ami Chand 57 BLR 1000 as well as
- 2) In case of Kanhaiya Lal Vs. State of Rajasthan & Ors. by Jaipur Bench of Hon'ble Rajasthan High Court.
- 3) It was further laid down in case of coal India Ltd. Vs. P.O. Labour Court no. 3 & Ors. 2001 (89) F.L.R (929) By Delhi H.C. and in case of Yashwant Singh Yadav 1989 (59) FLR 607 Vs. State of Rajasthan 7 Ors. of Jaipur Bench of Rajasthan High Court.

In case of Kanhaiya Lal Supra Lordship of Hon'ble High Court of Rajasthan Laid down following principle:-

"Part Time employees in social welfare Department- Department issuing a circular saying part time and daily wage employees should not be allowed to complete 240 day of service- It is an unfair labour practice."

B) There is non-compliance of S.25 F I.D. Act 1947 in the instant case hence termination of workman Mahipal is illegal because he has completed 240 days service in a calendar year. Workman is entitled for reinstatement with full back wages.

This principles have been laid by Hon'ble High Court of Punjab and Haryana in case of Municipal Committee Karnal Vs. Ramesh Chand and Ors. 2016 L.L. R P 513.

C) Even a part time employee cannot be dismissed without complying S.25-F of the I.D. Act 1947 . This principle has been down in case of D.A.V. College Vs. P.O. and another 2016 L.L.R 537 P& H High Court

In aforesaid case it was also held that reinstatement not compensation appropriate when employer gives breaks in service to the part time workman because management had indulged in unfair labour Practice.

In case of PathanKot Vehicleades Pvt Ltd. Vs. P.O. Industrial Tribunal, Gurdaspur & anrs. 2016 L.L.R 461 Lordship of P& H High Court held that reinstatement appropriate when termination is violative of I.D. Act.

D) Adverse inference appropriate when employer fails to produce attendance/wages register and other service record .

This principle has been laid down by their lordship of Hon'ble S.C. in case of **H.D. Singh Vs. R.B.I. 1985 S.C.C (L & S) 975.**

On the basis of aforesaid settled law of Hon'ble Supreme Court , Lordship of Hon'ble Delhi High Court in case of **Bright Export Ltd. Vs. Central Board of Trustees E.P.F. organization 2016 L.L.R. P. 487.**

Specified that burden lies on party who pleads as per provisions of S.103 Indian Evidence Act.

His Lordship further specified that since it is within the special knowledge of the employer that a particular employee is employed with him or not hence burden lies on him to produce attendance register/ wages register or any other service record.

Management through its written arguments raised following objections:-

1. Workman was working as a part time employee and there is no provision and process for appointment of part time employee and department of post has neither any service rule nor any service condition for recruitment of part time employees. Hence no selection procedure it being adopted for engaging any part time employee. Further whenever the services of such worker are required, the department engages them on the need basis and can terminate them whenever the department has an aversion to the quality of their work. There is as such, no requirement to issue any written orders for engagement and termination of a part time employee.

2. The management further contended that workman was working as a part time care taker at Haridwar MDG. It is further submitted that he was not a regular employee in the department of post i.e. a reason that no appointment letter was issued to the workman because the caretaker post is part time post and he is merely a part time employee and his services were terminated owing to his unsatisfactory work in inspection quarter.

3. It is further contended by the management that Mahipal Singh being a part time employee in the department was engaged in the department for five years in the inspection quarter for caring of the officer of the official approaching in inspection quarter. It is further submitted that whenever any VIP residing in inspection quarter in the night hours, only then services of the workman were utilized in cooking food with the help of Group-D Haridwar MDG as and when the requirement arises.

4. It is further submitted that the workman never got any appointment letter from the Chief Post Master. However there is no provision and process for appointment of part time employee and department of post has neither any service rule nor any service condition for recruitment of part time employee. Hence, no selection procedure is being adopted for engaging any part time employee. It is submitted that workman was engaged purely on temporary basis.

5. It is submitted that the case filed by the workman was duly defended by the department before the Assistant Labour Commissioner, Central, Dehradoon. It is submitted that the workman was not a regular employee in the Department of Post. The acquaintance roles are in exercise for drawing salary of the Regular employees and ACG-17(Pay Receipt) is prepared for drawing of part time employee. The same was done in case of Sh. Mahipal Singh. The name of the part time employee has also not been mentioned in the pay receipt. Either person, who worked in the department as part time employee his signature are obtained in the ACG-67 for the wages based on the number of days he worked as part time employee, therefore, it cannot be said in any manner that he was drawing a salary as in the case has been done for regular employee.

From the said submission of the workman it is clear that the workman since inception was aware of the fact that he is a casual employee (Part time) not a permanent employee. But despite this the workman has made false statement before this Hon'ble Court, hence, the workman is not at all entitled for any relief.

That the workman has failed to produce even a single documentary evidence or otherwise which can establish on record that the workman was the regular employee. On the Contrary, the management has successfully proved on record that the workman was a part time employee and his services were being obtained/availed as and when the need arises and further that when his services were not upto the mark and unsatisfactory then his part time services were terminated by the management.

That the workman has also failed to establish on record that the termination of the workman from his part time service was illegal, hence, the reference as made by the Ld. Asst. Labour Commissioner stands disproved and deserve to be dismissed with cost.

In the premises aforesaid and in view of the facts and circumstances of the case as explained herein above, it is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to dismiss the claim of the claimant/workman in view of the detailed submissions made herein above, in the interest of justice.

No ruling in reply by management nor in support of its case has been cited by Ld. A/R for management. Moreover there is sufficient required evidence of workman which comes in the category of reliable and credible evidence. Which proves the case of workman that he was part time employee. Who has completed 240 days service in each calendar year since 1.1.1990. He was getting salary of Rs. 3,195 P.M. He shall be deemed to be in continuous service under an employer vide provisions of S.25-B (2) (A)(ii) I.D. Act.

On 8.10.2015 he was informed orally by Sub Post Master, Uttrakhand that his services are no more required and you are terminated from the service. Since then he made several representations to the management with request to continue his service but all go in vain. He was not paid retrenchment compensation as per provision of section 25-F I.D. Act. Hence his termination is violative of provisions of I.D. Act.

Hence he is entitled to reinstate with full back wages in the light of principles laid down in the cited rulings on behalf of workman. Moreover management has not produced his service records etc. Which may counter case of workman.

In these circumstances this Tribunal is of considered view that question of determination No. 1 mentioned in schedule of reference and issue No. 1 framed by my Ld. Predecessor is liable to be decided in favour of workman and against management on the basis of reliable to credible evidence of workman supported with the settled law of Hon'ble Supreme Court and other Hon'ble High Courts. Which is accordingly decided and management is required to be directed to reinstate the workman Sh. Mahipal with all back wages since his termination i.e. from 8.10.2005.

Reference is liable to be decided in favour of workman and against management. Which is accordingly decided claim statement is allowed.

Award is accordingly passed.

Dated:-20.06.2016

HARBANSHP KUMAR SAXENA, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1320.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 49/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/76/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 24th June, 2016

S.O. 1320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 24.06.2016.

[No. L-12011/76/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/49/2012

Shri Ramayan Prasad,
S/o Govind Prasad,
Vill/PO Mangawan Basti,
Distt Rewa (MP)

... Workman

Versus

The Dy.General Manager,
Union Bank of India, Regional Office,
Sirmour Chowraha,
Distt. Rewa MP)

Branch Manager,
Union Bank of India,
Branch Raipur Karchulian,
Distt. Rewa

...Management

AWARD

Passed on this 25th day of April 2016

1. As per letter dated 22-3-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/76/2011-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Union Bank of India, Branch Raipur Karchulian, Distt. Rewa (MP) in terminating the services of Shri Ramayan Prasad w.e.f. August 2010 is legal and justified? What relief the claimant is entitled to and from which date?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was appointed on vacant post of peon from 4-10-05 in Raipur Karchu branch. From date of his initial appointment, he was continuously working till 7-8-2010. He was not served with any notice about his work. He was working from 10 AM to 6 PM. He was filling water, he was doing cleaning work of roads, cleaning toilets etc. He was also required to work in Agricultural centre located by side of branch building. He was paid wages Rs.90 per day. He was not allowed to sign muster telling that he was not regular employee after his services are regularized. He would be allowed to sign the muster register. His services were orally terminated on 7-8-2010. He was not served with notice, retrenchment compensation was not paid to him. Permission from Government was also not taken. That he was working more than 240 days during each of the year. Provisions of Section 25-F of ID Act was not followed. Principles of last come first go was not followed. On such ground workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that workman was not appointed following recruitment rules. His name was not sponsored through Employment Exchange. Workman was not interviewed. Workman was engaged on daily wages as per exigencies as casual employee. The workman is not covered as workman under Section 2(s) of ID Act. There is no dispute within meaning of Section 2K of ID Act. Workman cannot raise dispute under Section 2 of ID Act. Workman was intermittently engaged for 2-3 hours for cleaning, sweeping in the branch premises. His services were utilized for casual work. The workman was not given appointment letters, he was not appointed following recruitment process. The service conditions of regular employees are covered by settlement. Ist party was not continuously working from 4-10-05 to 7-8-2010. It is reiterated that workman was intermittently engaged for casual nature of work 2-3 hours a day. Workman is trying to get back door entry in bank service. His claim is not tenable. Workman not completed 240 days in any year. Violation of Section 25-F,G,H is denied. 2nd party referred to ratio held in various cases by Apex Court. 2nd party prays for reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|---------------------|
| (i) Whether the action of the management of Union Bank of India, Branch Raipur Karchulian, Distt. Rewa (MP) in terminating the services of Shri Ramayan Prasad w.e.f. August 2010 is legal and justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. The term of reference pertains to legality of termination of services of workman. Ist party workman filed affidavit of his evidence supporting his contentions in statement of claim that he was appointed as peon on 4-10-05. He was continuously working till 7-8-2010. He was doing work of different kinds. Details given in his affidavit of evidence. His services were orally terminated on 7-8-2010. He was not served with notice. No retrenchment compensation was paid to him. He completed more than 240 days continuous service. In his cross-examination, workman says at the time of termination, order in writing was not given to him. Exhibit W-2 was sent by him to Branch Manager by post. Exhibit W-3 was given by him to Branch Manager. He denies that he had obtained Exhibit W-2, W-3 by committing theft. Exhibit W-5 was maintained by officers. It bears seal and signature of the officer. The seal is not appearing on some pages. In cross-examination of workman, it is not challenged that he was working in the branch from 2005 to 2010, he completed more than 240 days. There is absolutely no cross examination that workman was paid wages Rs.90 per day. His services were terminated without notice, retrenchment compensation was not paid.

6. Witness No.2 for Ist party Shri Kamlesh Chourasia supported evidence of Ist party workman that workman was working in Bank. Said witness runs tea stall. He was supplying tea and snacks to the employees in the Bank. He had seen workman working in the branch. The services of workman were appreciated. In his cross examination, witness No.2 of Ist party says that he was supplying tea and snacks. His stall is closed by the Bank. He denies suggestion that workman is his relative therefore he is deposing false in the claim.

7. Management's witness Satyabrata Sawal filed affidavit supporting full contentions of 2nd party in Written Statement. Witness of management in his cross examination says since August 2011, he is working in Karchulian branch. He denies that workman was appointed as peon on 4-10-05. Management's witness claimed that workman was intermittently engaged as casual labour. Witness of management denied documents referred to him. No documents about his termination notice, payment of retrenchment compensation were seen by him in Bank record.

8. The evidence of workman and his witness is supported by documents. Exhibit W-1 is copy of pass book of workman. Exhibit W-4 shows deposit of amounts in his account. Exhibit W-2 is letter given by workman to General Manager, Exhibit W-3 is internal letter issued by Branch Manager. Exhibit W-5 is copy of the peon book consisting various pages bears signature of workman regarding correspondence of dak. The evidence on record and documents supports evidence of workman that he was working as peon, he was paid Rs.90 per day. Workman has not produced appointment order. His evidence is silent about when post was advertised and he was selected following recruitment process rather documents shows that workman was intermittently working. Though workman worked more than 240 days in 12 months preceding his termination, his services are terminated without notice, he was not paid retrenchment compensation. Termination notice was not issued to him. As such termination of services of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No.2. In view of my finding in Point No.1 termination of services of workman is illegal, question arises whether workman is entitled for reinstatement with backwages. Workman has not produced appointment letter. In his cross examination, he says termination order was not issued to him. Workman in his statement of claim and evidence says he was paid Rs.90 per day. That he was not paid salary of regular employee. Management contents that workman was engaged as casual labour for 2-3 hours per day. Workman claims contrary to it that he was working from 10 AM to 6 PM. The evidence on record is clear that workman was engaged on daily wages. He was not appointed following recruitment rules against sanctioned post.

10. Learned counsel for Ist party Shri R.B.Tiwari submitted written notes of argument. Learned counsel relies on ratio held in case of

Jasmer Singh versus State of Haryana and another reported in 2015(2)SCC(L&S) 46. Their Lordship dealing with termination of daily wage worker. Non compliance with statutory provisions under Section 25-F.G.H. their Lordship held termination is void ab initio. The tribunal cum Labour Court while setting aside termination order was justified in granting reinstatement with full backwages.

In present case, workman has worked more than 240 days during calendar year. Termination of service without notice is void ab initio. Therefore workman is entitled for reinstatement with backwages. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of Union Bank of India, Branch Raipur Karchulian, Distt. Rewa (MP) in terminating the services of Shri Ramayan Prasad w.e.f. August 2010 is not proper and legal.
- (2) 2nd party is directed to reinstate workman on the position he was working at the time of his termination. Workman is allowed backwages at the rate of Rs.90 per day from date of termination.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 246/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/90/99-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 24th June, 2016

S.O. 1321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 246/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 24.06.2016.

[No. L-12012/90/99-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/246/99

The Assistant General Secretary,
Central Bank Employees Union,
C/o Central Bank, MICI Extn Counter,
54, Paras Building, Adarsh Nagar,
Jabalpur

...Workman

Versus

Regional Manager,
Central Bank of India,
CBI, Regional Office, 601,
Napier Town, Jabalpur

...Management

AWARD

Passed on this 13th day of April 2016

1. As per letter dated 6-7-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/90/99/IR(B-II). The dispute under reference relates to:

“Whether the management of Central Bank of India is justified in imposing the penalty of stoppage of one annual increment upon Shri Ravi Prakash Agrawal, Clerk cum Typist? If not, what relief the concerned workman is entitled to?”

(ii) Whether the management is justified to deny the annual increment due to workman during the period of suspension i.e. from 13-4-93 to 4-4-94. If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim through Assistant General Secretary. Case of workman is that service conditions of 2nd party Bank are covered by Sastri Award, Desai Award and Bipartite Settlement. Workman Ravi Prakash Agrawal was served with letter of suspension on 8-4-93 informing that fraud of Rs.90,000 in SBI A/c No. 8459 at Jabalpur while he was working as cashier in the branch. The suspension continued till 12-4-94 pending enquiry. Chargesheet was issued to workman on 30-9-94 alleging misconduct under clause 19.5.j, 19.7.d pertaining to committing act prejudicial to the interest of Bank or gross negligence involving or likely to involve serious loss, breach of any rule of business or instructions for running of any department. Ist party submits that Shri D.D.Gupta Manager was appointed as Enquiry Officer. Enquiry Officer submitted his findings on 17-11-95. Ist party submits that report of Enquiry Officer is contradictory. Enquiry Officer totally ignored facts deposed by management's witness Shri Y.S.Thakur in his cross-examination. Management's witness in his cross examination confirmed withdrawal of Rs.16,000 & 30,000 were passed for payment by Competent Authorities. The verbatim of relevant portion of evidence is reproduced.

3. Ist party further submits that it has come on record of enquiry that Shri Agrawal did not follow Bank's own manual and about scrutiny by cashier before payment. Para 10 Page 53 manual of instruction was supplied by management. It is reiterated that Enquiry Officer himself concluded that allegation of negligence on part of workman resulted payment of forged withdrawals from HSS Account No. 8459 of Smt. Sneha Mishra. The concerned cannot be held liable for it. As per the provisions in manual and instructions, it is reiterated that no act prejudicial to the interest of Bank likely to cause serious loss was committed by workman Shri Ravi Prakash Agrawal. The findings of Enquiry Officer held workman guilty is illegal. Workman was not paid increment for the period of suspension as per Bipartite Settlement. The guidelines is issued by Bank on 17-2-98. On such ground, workman prays that punishment of stoppage of one increment with cumulative effect be set-aside and increment for suspension period be allowed.

4. 2nd party was served with notice. However it failed to file Written Statement. 2nd party proceeded ex parte on 25-5-06. The application submitted for setting aside ex parte order on 22-6-06 was rejected on 2-5-2011.

5. Considering enquiry was conducted before imposing punishment against workman, preliminary issue about legality of enquiry was decided on 4-4-2014. Enquiry was found legal and proper.

6. Considering pleadings of Union and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|--|--------------------|
| (i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings? | In Negative |
| (ii) Whether the punishment of with-holding one increment is proper and legal? | In Negative |
| (iii) If not, what relief the workman is entitled to?” | As per final order |

REASONS

7. Chargesheet was issued to workman on 30-9-94 is produced by 1st party. Charge No.1 against workman pertains to while working as paying cum receiving cashier at Garha branch on 4-12-92 made an unauthorized payment of withdrawal of Rs.60,000/- In HSS Account 8459 of Smt. Sneh Mishra which was not accompanied alongwith pass book. Competent Authority has not authorized for payment of withdrawal without pass book as there did not appear a request at the reverse of the withdrawal for Rs.60,000 duly signed by the account holder requesting that the amount may be allowed to be withdrawn without pass book. Workman failed to verify before paying out cash against a withdrawal of Rs.60,000 that payment is duly authorized which has resulted in payment of forged withdrawal in HSS Account No. 8459 of Smt. Sneh Mishra was not accompanied with pass book. Competent Authority had not authorized for payment of withdrawal without book. It did not appear request of the withdrawal of Rs.60,000 signed by Account Holder requesting amount will be allowed to be withdrawn without pass book. Workman has failed to verify before paying out cash against a withdrawal of Rs.30,000/- which has resulted in payment of forged withdrawal in HSS Account No. 8459 of Smt. Sneh Mishra and ultimate loss to the Bank. Thus Mr. Agrawal was grossly negligent in discharge of his duties. Clause (c) of the charge pertains to workman Agrawal while working as paying cum receiving cashier at Garha changed denomination of notes on Bank forged withdrawal form of Rs.60,000 of Smt. Sneh Mishra from Rs.50/- and Rs.100/-, and even then failed to recognize the party to whom payment of Rs.60,000 was made inspite of the fact that there were only five payments in HSS on 4-12-92. Workman failed to recognize the party just after 3 to 4 days to whom payment of Rs.30,000 in HSS Account No. 8459 of Smt. Sneh Mishra was made. As stated above, 2nd party has not filed Written Statement. Application for setting aside exparte order was set-aside. Workman himself has produced copy of Enquiry Report and record of Enquiry Proceedings. Enquiry Officer in his report held Charge No. 1(d), 1©(b) not proved. That CSC was found guilty of ignoring absence of signature of Teller clerk MEX-1, MEX-2 in token of withdrawal dated 4-12-92, 15-1-93 posted in the ledger. That CSC failed in bringing the fact to the notice of Head of department. Then charge against CSC proved only in respect of negligence in discharged of his duties. No specific finding is recorded w.r.t. charge under Clause 1,b. Management examined Shri Y.S.Thakur and documents produced in Enquiry Proceedings were admitted by Defence Assistant of CSC. Management's witness Shri Y.S.Thakur in his evidence says on 31-7-92 balance in the concerned account was Rs.91,588/- Miss. Prabha Shukla had completed passbook , on 4-12-92 balance column was blank. MEX-1 Miss Prabha Shukla Teller had posted the entries. He says that said Prabha Shukla had not put her signatures near the drawal signature. Management's witness further says signatures in MEX-1 & 3 were similar that while careful examining the signatures, it did not carry. That in left side of debit entry, initial of officer Shri S.N.Verma are there. Miss Prabha Shukla Teller had posted instruction MEX-2 in ledger the specimen signatures on MEX-2,3. There is some difference in signatures but while carefully examining the signatures did not tally. In reply to Q.19, management's witness says there are two signatures of Account Holder Token No. 603 details of denomination 100 x300 and token No. 603 placed cancelled and another place 100 x 600. That workman Agrawal did not identify Sneh Mishra. The evidence of management's witness is absolutely silent that workman did not notice no signature was taken of the person withdrawing amount by the side of entry. The finding of Enquiry Officer regarding negligence of workman in duty is not supported by cogent evidence. The guidelines produced in the record Para 10 dealing with scrutiny by cashier before payment, its verbatim is reproduced-

“ when the cashier receives cheque/ withdrawal forms from saving department for payment, he should initial in the cash payment book and take the instructions. He should verify that all such payments are approved by the authorized officer. Before handing over the cash, paying cashier should ask the presenter of the token to state orally the amount to be received by him. This ensures that the payment is not made to the wrong person or of the wrong amount. Then he should obtain the signature of person receiving cash on the overleaf of the instruction and match the signature on the overleaf of the presenter who must have signed once at the time of receiving token.

In present case, evidence of management's witness Shri Y.S.Thakur shows the payment of withdrawal was sanctioned by Mr. Verma. Therefore findings of Enquiry Officer about negligence of workman in duty is not supported by cogent evidence. For above reasons, I record my finding in Point No.1 in Negative.

8. Point No.2- In view of my finding in Point No.1 charge against workman is not proved, punishment of withholding one increment with cumulative effect cannot be sustained and deserved to be quashed. Similarly when misconduct alleged against workman is not proved from evidence in Enquiry Proceedings, the workman be entitled for full wages for the period of suspension after deducting the subsistence allowance. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) Punishment of withholding one increment of workman is set-aside. 2nd party is directed to release one increment and pay wages for the suspension period deducting subsistence allowance.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1322.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 220/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-17012/35/98-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 24th June, 2016

S.O. 1322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 220/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of LIC of India and their workmen, received by the Central Government on 24.06.2016.

[No. L-17012/35/98-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/220/99

Shri Sewak Das Manikpuri, Ex-Peon of
LIC C/o Manharan Parishop,
MPEB Colony,
Azad Chowk, Aara Machines,
Korba, Bilaspur

...Workman

Versus

Sr.Divisional Manager,
LIC of India,
Divisional Office, Jeevan Bima Marg,
Raipur

...Management

AWARD

Passed on this 18th day of April 2016

1. As per letter dated 14-25/5/99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-17012/35/98/IR(B-II). The dispute under reference relates to:

“Whether the action of the management of LIC of India Korba Branch, Distt. Bilaspur (Under Divisional Office, Raipur MP in terminating the services of Shri Sewak Das Manikpuri, Ex-Peon, LIC, Korba branch w.e.f. 1-4-98 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/2. Statement of claim was amended. Amended copy of statement of claim is submitted on record. Case of 1st party workman is that he was working as regular peon in Korba branch of LIC from 23-7-90 to 31-12-97. From 1-1-1998, he was not allowed to work. Thereafter he was allowed to work from 10-2-98. Thereafter he was not allowed to work though he was paid basic pay and DA. Till 31-3-98, he was working in office of Sr. Manager M.Karketta as peon. Without issuing notice, his services were terminated from 1-4-98. He raised dispute before ALC, Bilaspur. The report was submitted to Secretary, Ministry of Labour.

3. Ist party workman further submits that new branch of LIC was opened at Korba. He was engaged as daily wage employee/ peon. The post was advertised. He submitted application on 5-4-90. After taking interview, he was selected. Initially he was appointed as waterboy during the period 9-4-90 to 5-7-90. Thereafter from 23-7-90, he was working as

daily wage peon. He was paid monthly pay prescribed for sub staff. In 1992, the pay of staff was revised. As per circular dated 8-10-97, the Class III, IV employees were paid exgratia amount instead of bonus. For the year 1996-97, he was paid exgratia amount Rs.3016/- . Since his initial appointment, he was continuously working for more than 240 days during each of the year he was eligible for the benefits paid to the regular employees. His services are terminated in violation of Section 25-F,N of ID Act. He was not served with any notice. Any disciplinary action was not taken against him. He was engaged by 2nd party on daily wages. His appointment was confirmed by Sr. Branch Manager vide letter dated 2-1-98. After termination of his service, he is unemployed. He has crossed the age for appointment. He could not get work in other institutions. On such ground, 1st party workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement at Page 5/1 to 5/5. Written Statement was amended. 2nd party opposed claim of 1st party workman. 2nd party submits that it is corporation established under LIC Act. Workman is not entitled to any relief as he is daily wager/ badli workman. He is not entitled to hold any post. Section 49 of LIC Act enables the corporation to frame rules. in exercise of said powers, LIC staff regulations 1960 have been framed. Those regulations provides for employment of temporary staff time to time. That no person appointed as per Regulation 8 would be entitled for absorption in the corporation on any post. That no appointment orders were issued to workman at any time. He is only daily wager and taken on work whenever the existing Class IV employee of corporation was on leave or when ever there is extra work. It is further submitted that workman and other persons keep on coming to the office of the corporation and the work was being given on first come first serve basis in accordance with the need. Even more persons could be taken on work during the same period. It is reiterated that workman was not issued any appointment orders except for the period 9-4-90 to 19-6-90. The order was issued on 13-4-90 to workman as waterman during summer season. Thereafter workman worked as badli workers with terminal breaks from 23-7-90. That claimant workman was badli worker engaged on daily wage basis, doesnot hold any post. Formal termination of workman was not necessary. The names of the badli workers are given in Para-9,10 of Written Statement. The recruitment process is prescribed in Staff Regulation 1990. It is reiterated that workman was not appointed following selection process. Workman had appeared for test of regular selection in 1996 with Roll No. 114 but he had failed. The employees of LIC had raised dispute in R/27/99 pertaining to temporary part time workman of LIC. The decision was awaited. Workman being a temporary employee cannot claim any benefit. By amendment, 2nd party denied that workman was working as temporary employee on vacant post of peon. The pleadings are raised after cross examination of workman. There is no provision for maintaining the list of badli or temporary workers. Regular appointment of workmen was conducted in 1996. Workman appeared in selection process but he could not be selected for regular post. Workers who were selected in 1996 were given appointments. 2nd party has referred to ratio held in various cases and reiterated that workman is not entitled to any relief. That reference be answered in its favour.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|---------------------|
| (i) Whether the action of the management of LIC of India Korba Branch, Distt. Bilaspur (Under Divisional Office, Raipur MP in terminating the services of Shri Sewak Das Manikpuri, Ex-Peon, LIC, Korba branch w.e.f. 1-4-98 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

6. Term of reference pertains to legality of termination of services of workman from 1-4-98. Admitted documents produced by workman Exhibit W-1 shows workman was engaged for 85 days from 9-4-90 to 1-7-90 on temporary basis as waterman on payment of Rs.666/- per month. Exhibit W-5 shows payment to workman from April 96 to March 97, total amount Rs. 3016/- . Exhibit W-6 is representation submitted by workman for revision of pay from August 92. Exhibit W-7/1 shows payment of Rs. 2124/-. Exhibit W-7/2 payment of Rs.1931/- on 31-1-97. Exhibit W-7/3 shows payment of Rs.200/- to workman. Exhibit W-7/4 shows payment of Rs.348/- towards refreshment charges. Exhibit 7/5 shows payment of Rs.1966/- to workman in March 1997. Exhibit W-7/6 shows payment of Rs.280/- on 12-3-97. Exhibit W-7/7 shows payment of Rs.1022 on 21-3-97. Exhibit W-7/8 shows payment of Rs.920 to workman. Exhibit W-7/9 shows payment of Rs.1671 to workman on 1-4-97. Exhibit W-7/10 shows payment of Rs.280/- for working on holidays. W-7/11 shows payment of Rs. 2022 on 1-1-1998, W-7/12 shows payment of Rs.1034.46 for working as badli. Exhibit

W-7/13 shows payment of Rs.200 as daily wages to workman. Exhibit W-7/14 shows payment of Rs.640/- as daily wages to workman. Exhibit W-8 shows payment of bonus to workman Rs. 4550/- for the period 1995 to June 1996.

7. Exhibit M-1 shows working days of workman 195 days in 1990, 261 days in 1991, 259 days in 1992, 293 days in 1993, 267 days in 1994, 233 days in 1996, 230 days in 1997, 14 days in 1998. If holidays are included, it is clear that workman worked more than 240 days period from 1992 to 1997.

8. Workman filed affidavit of his evidence supporting his contentions in statement of claim. That he was working on daily wages as peon. On 5-4-90, he submitted application for the post of peon which was advertised. That from 23-7-90, he was working regularly as peon. His services were terminated without notice on 31-3-98. He was not paid retrenchment compensation. In his cross examination, workman says Padam Singh Raj, Shamdas Manikpuri, Suresh Kumar Dewangan, Bundel Singh and others were working as badli. That he doesnot know Brijbhan Ahirwar, Shyamdas Manikpur, Rakesh Kumar Yadav. He admits that in 1996, he participated in selection process. His Roll No. was 114. He was not selected at that time. He was temporarily working till he was working in 2nd party. He denies that he was engaged for working when regular employee was absent. Appointment letter was given to him, its zerox copy is produced, the same is marked Exhibit W-1. That he was also given other appointment letters, same are not produced on record. No exam was taken before his engagement. He denies that he was not getting pay of regular employee. He was getting leave, bonus was paid to him, order in writing for termination of his service was not given to him. Temporary employees were not regularized. Initially he was working as sub staff. He submitted application for sub staff, its copy is produced. The post was advertised. Copy of advertisement is produced. He was unable to explain why those documents were not on record. Workman filed additional affidavit of his evidence. Workman in his additional affidavit says in 2011, the post in establishment of 2nd party was advertised. He submitted application for post of peon on 3-6-2011. His application was rejected on the ground that dispute between him and management was pending before this Tribunal. In his cross examination, workman says that during 1990 to 1999, he was working with 2nd party continuously. He has not produced documents in that regard. He denies that he was engaged during leave period of employees. In 1996, he submitted application for regular post, he was not selected. In 2011, he submitted application for regularization. His application was rejected. He denies that his application was rejected as he had not produced experience certificate. He admits that he did not work with 2nd party from 18-1-06 to 18-1-2011. Workman admits that he was not regular employee of 2nd party during 1996 to 2011. In 1998, he submitted application for documents to management. He did not deposit any charges along with his application.

9. Exhibit W-3 shows payment of Rs.250/- towards miscellaneous collection. W-4 is receipt of application for the post of peon. W-5 is copy of application submitted by workman.

10. Management filed affidavit of evidence of witness Shri S.D.Jaulkar, Administrative Officer, Personnel Deptt. LIC, management's witness in his affidavit of evidence has reiterated contentions in Written Statement filed by 2nd party w.r.t. staff regulations of 1960, Regulation 8 pertaining to temporary staff. That no appointment orders were issued to workman except workman working as waterman during 9-4-90 to 29-6-90. It is surprise to say that contentions of 2nd party in Written Statement are covered in affidavit of evidence of management's witness. That workman was employed as badli/temporary workman. No list of badli workers are maintained. Management's witness has also narrated about ratio held in case Anil Kumar versus LIC reiterating that workman was not appointed following recruitment process. He was engaged as temporary employee. Workman did not fulfill eligibility as per the regulations. In his cross-examination, management's witness says he was never posted at Korba branch. Workman was not engaged by him. Workman never worked under him. Any record about workman engaged as badli is not produced. Korba branch was opened in 1990. He was unable to tell sanctioned post of sub staff in said branch. In 1996, regularization process was undertaken. He was unable to tell how many persons were selected or appointed at that time. That since 23-7-90, workman was engaged on daily wages. In 2011, selection process was undertaken by management. Workman was not called for interview. Management's witness admits that the selected candidates Ramdas and Sewakdas were also engaged. Other candidates were working as badli. Management's witness admits that after selection process of 1996-97 was completed, workman was terminated from services. The seniority list of badli or daily wager was not maintained. Workman as not paid retrenchment compensation.

11. At the time of argument, learned counsel for 2nd party Shri R.P.Agrawal emphasized that in view of Section 48, 49 of LIC Act and Staff Regulations 1960, the provisions of ID Act are not applicable. Workman is not entitled to any relief.

12. Learned counsel relies on ratio held in

Case of A.V.Nachane versus Union of India reported in AIR 1982-SC-1126. Their Lordship dealing with Section 48(2C) read with Section 48(2)(cc) of LIC Act1956 – the claim in above cited case relates to bonus. The above cited case doesnot pertain to legality of termination of daily wage employees engaged on temporary basis.

Ratio held in case of M.Venugopal versus Divisional Manager, LIC of India Machilipatnam reported in AIR 1994-SC-1344. Their Lordship dealing with termination of service in violation of Section 25-F of ID Act. Their Lordship held contract of employment entitling corporation not to confirm probationer in case he fails to achieve target fixed in regard to his performance, termination effected without any notice cannot be on the ground of non-compliance of Section 25-F.

The facts of present case are not comparable. Workman was not appointed on probation. Any kind of target was not fixed for completion of probation. Workman was engaged on daily wages. Ratio cannot be applied to case at hand.

In case of LIC versus Asha Ramchandra Ambekar reported in AIR-1994-SC-2148. Said case pertains to appointment on compassionate ground. Their Lordship held instructions not contemplating appointment when one of members of deceased family is gainfully employed.

The facts of present case are not comparable. Ratio cannot be applied to case at hand.

In case of LIC versus Raghavendra Seshagiri Rao Kulkarni reported in AIR-1998-SC-327. Their Lordship while dealing with termination of probationer held such termination also would not amount to retrenchment within meaning of Section 2(oo) of ID Act. Therefore it would not be said that requirement of Section 25-F of ID Act was not complied, then termination would be bad.

From reading of para-5, it is clear that appointment of the respondent employee was on probation initially for the period of 12 months from date of joining. The corporation has discretion to extend probation period not exceeding 24 months. Respondent in above cited case was discharged from service during probation period in terms of Regulation 44.

Workman was not appointed on probation rather claim of workman pertains to termination in violation of Section 25-F of ID Act. The ratio in above cannot be applied to case at hand.

Ist party workman was not working as Development Officer therefore there is no controversy involved for decision whether workman is covered as workman under Section 2(s) of ID Act or not. Ratio held in Civil Appeal No. 5690 – 5691 of 2010 by Hon'ble Apex Court therefore needs no detailed discussion. As Ist party workman was engaged on daily wages and not as Development Officer in LIC, absolutely no question is involved whether Ist party is covered as workman under Section 2(s) of ID Act or not.

13. Learned counsel for Ist party Miss R.Nair relies on ratio held in

Civil Appeal No. 2004 of 2008 between LIC of India versus Shri R.Suresh. even in said case, respondent was appointed as Development Officer and not on daily wage labour also cannot be applied to case at hand.

Miss R.Nair also produced copy of Judgment in Appeal No. 6950 to 6954 & 6956 of 2009. The careful reading of said judgment shows that claim involved in all those appeals pertains to regularization of the employees engaged temporarily during the period 1981 to 1985 and interpretation of award by R.D.Turkede dated 17-4-88. No question of legality of termination of temporary badli part time employees in violation of Section 256-F of ID Act was involved. In said judgment therefore ratio held in case cannot be beneficially applied to case at hand.

14. 2nd party has pointed out my attention to Section 6(2)(g) of LIC Act.

Section 6(2)(g) provides- The corporation has power to carry either by itself or through any subsidiary or business in any case where such other business was carried on by subsidiary or an insurer whose controlled business has been transferred to and vested in the corporation.

Section 48 provides powers of Central Government Courts. Section 48(2) (a) deals with terms of office and the conditions of service of members.

Section 48(2)(cc) deals with the terms and conditions of service of the employees and agents of the corporation including those who became employees and agents of the corporation on the appointed day under this Act.

(d) the jurisdiction of the Tribunals constituted under Section 17.

Section 2(A) provides the regulations and other provisions as in force immediately before the commencement of the LIC Amended Act 1981 w.r.t. the terms and conditions of service of employees and agents of the corporation including those who became employees and agents of the corporation on the appointed day under this Act shall be deemed to be rules made under clause (cc) of sub section (2) and shall subject to the other provisions of this section have effect accordingly.

Section 48(2)(c) deals with the provisions of clause (cc) of sub section (2) and subsection 2(B) and any rules made under the said clause (cc) shall have effect and any such rule made with retrospective effect from any date shall also be deemed to have had effect from that date notwithstanding any judgment, decree or order of any court, tribunal

etc. and notwithstanding anything contained in the ID Act 1947 or any other law or any agreement, settlement, award or other instrument for the time being in force.

The provisions in above sections could not be disputed. No doubt as per Section 48, the powers to make regulations are not provided.

15. Learned counsel for 2nd party was unable to point out what regulations have been framed by the corporation w.r.t. termination of badli temporary employees in continuous service more than one year in violation of Section 25-F of ID Act. Copy of Staff Regulation 1960 is produced for perusal.

Regulation 8 deals with temporary staff. Provide that appointment of Class-III, IV staff on temporary basis. Sub clause 2 provides no person appointed on sub regulation (1) shall only by reason of such appointment be entitled to absorption in the service of the corporation or claim preference for recruitment to any post.

Regulation 8 is absolutely silent w.r.t. termination of temporary staff after completion of 240 days continuous service during a calendar year.

16. Section 25-F of ID Act deals with

“ Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months and
- (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

17. Any regulation is not found to have been made by Insurance Corporation how the services of temporary employees completed more than 1 year service can be terminated. Section 17 of LICI Act provides for constitution of Tribunals. Learned counsel for 2nd party Shri R.P.Agrawal submits that no such Tribunal has been constituted. The Regulation (8) made by LIC Corporation is silent on the point how services of badli/ temporary, daily wager employees completed one year continuous service could be terminated. In absence of such clause, the provisions under ID Act cannot cease to operate. As no Tribunals are established under Section 17 of LIC Act, remedy under ID Act is not allowed, the 1st party workman will be without remedy. Such vacuum of jurisdiction can not be accepted. For above reasons, arguments advanced by learned counsel for 2nd party cannot be accepted. Workman is entitled to remedy under ID Act. The evidence on record shows workman completed more than 240 days continuous service during 1991 to 1997. His services are terminated without notice. No seniority list of daily wage employees are displayed. Thereby 2nd party violated Section 25(f) of I.D.Act, Rule 77 of ID Rules. Termination of workman is therefore illegal. For above reasons, I record my finding in Point No.1 in Negative.

18. Point No.2- In view of my finding in Point No.1 termination of workman is illegal. Learned counsel for 2nd party did not advance any argument w.r.t. relief would be granted to workman. Learned counsel for 2nd party Shri R.K.Agrawal emphasized that in cross-examination, workman admitted that he participated in selection process in 1996 but he was not selected. Workman had given up his rights. Above argument cannot be accepted. Merely participating in selection process in 2006 after raising the dispute cannot legalise termination of services of workman. His statutory rights cannot be taken away. In view of ratio held in 2015(4)MPLJ-5, AIR-2011(SC)2532, 2010(5)SCC-497, AIR-2010-SC-1236, AIR-2010-SC-1116 & AIR-2006-SC-355, termination of workman in violation of Section 25-F,G of ID Act is void-ab-initio. Workman is entitled for reinstatement. Workman in his evidence has stated that after termination of his service, he was out of employment, his family members are dependent on him is not shattered in his cross-examination. Therefore reinstatement of workman with backwages would be appropriate. Accordingly I record my finding in Point No.2.

19. In the result, award is passed as under:-

- (1) The action of the management is not proper.
- (2) Termination of 1st party is illegal for violation of Section 25-F of ID Act. 2nd party is directed to reinstate workman with continuity of service and backwages.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युको बैंक के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 73/06) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/46/2005-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 24th June, 2016

S.O. 1323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 73/06) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 24.06.2016.

[No. L-12011/46/2005-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/73/06

General Secretary,
Daily Wage Bank Employees Association,
9, Sanwer Road,
Ujjain (MP) ... Workman/Union

Versus
Zonal Manager,
UCO Bank, Zonal Office,
E-5, Arera Colony,
Bhopal ... Management

AWARD

Passed on this 12th day of May 2016

1. As per letter dated 9-11-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/46/2005-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of UCO Bank, Bhopal in terminating the services of Shri Shantilal Guldekar w.e.f. 28-7-02 is legal and justified? If not, to what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim . case of workman is that he was appointed as daily wage peon on 25-5-90. He was continuously working till 27-7-02. He completed 240 days continuous service every year. He is covered as employee under section 25 B of ID Act. He was working honestly in Khandwa branch of the Bank. That 2nd party Bank is covered as industry under Section 2(j) of ID Act, he is covered as workman under Section 2(s) of ID Act. He was appointed as peon against vacant post following prescribed procedure. His services are terminated in violation of provisions of ID Act. He was paid wages at Collector rate and not salary of regular employee in violation of Article 39B of the constitution.

3. Workman further submits that the termination is covered as retrenchment under section 2(oo) of ID Act. Termination of his service is in violation of Section 25-F ,G, H, N, rule 76,77 of ID Act. Workman submits that after termination of his service, he is unemployed. On such grounds, workman prays for his reinstatement with consequential benefits.

4. 2nd party filed Written Statement at page 8/1 to 8/4 opposing claim of workman. 2nd party further submits that workman was not employed following recruitment procedure. There was no notification of vacant post of peon. His name was not sponsored through Employment exchange. Workman was never selected by the Selection Board. He was engaged purely on pick and choose basis as per necessity for urgent extra work. Workman was engaged intermittently for casual manner on the basis of no work no pay. Workman was paid from contingency fund. There was no master servant relation between the parties. Workman was not subjected to Control and Discipline of the bank authorities. Ist party is not covered as workman under Section 2(s) of ID Act. His disengagement is not covered under Section 2(oo) of ID Act.

5. Workman not completed 240 days continuous service during any of the calendar year. He is not covered under Section 25 B of ID Act. As Ist party was not workman, his disengagement does not amount to termination. 2nd party denies that workman is terminated in violation of Section 25-F,G,N Rule 76,77 of ID Rules. Violation of Section 25-F is also denied. 2nd party prays reference be answered in its favour.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|--|---------------------|
| (i) Whether the action of the management of UCO Bank, Bhopal in terminating the services of Shri Shantilal Guldekar w.e.f. 28-7-02 is legal and justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. Point no.1 The term of reference pertains to legality of termination of Ist party workman. Ist party workman filed affidavit of his evidence. Workman in his affidavit says he was engaged on 25-5-90 as daily wage peon in Khandwa branch. He was working till 27-7-02 for 12 years. He had completed 240 days working during each of the calendar year. His services were orally terminated on 27-7-02. He was appointed against vacant post. He was served one months notice for termination neither paid one months pay in lieu of one months notice. After termination of his service, he is unemployed. He is supported by his relatives. From evidence of workman, documents Exhibit W-1 to W-3 are admitted in evidence. In his cross-examination, workman says Exhibit W-1 is reply given by union to his letter. Letter sent to union is produced on record. He passed 8th standard. His date of birth is 21-7-68. Appointment letter was not given to him. He was paid wages under voucher every week. Copy of voucher was not given to him. Documents about his working more than 240 days are in custody of the Bank. He was paid bonus as per the calculation submitted by him. Bonus was paid to him till 1997.

8. Documents Exhibit W-1 is letter given by Union to the workman that he had completed 240 days working till October 1989 cannot be said evidence of working days. Exhibit W-2 is certificate issued by branch Manager about workman working on casual basis in Khandwa branch, period is not mentioned. Exhibit W-3 is letter issued by Branch Manager regarding payment of bonus Rs.1022/- by cheque dated 6-10-05. The period for which said bonus was paid is not mentioned.

9. Management's witness shri P.K.Kashyap filed affidavit of his evidence supporting the contentions raised in Written Statement filed by management. That workman was never appointed as peon. There was no vacancy of peon in the Bank. Workman did not submit written application about particulars of his age, educational qualifications. Workman was never engaged on vacant post following the recruitment policy. Workman not worked more than 240 days in any of the calendar year. Affidavit is also devoted w.r.t. the settlement dated 12-10-89 pertaining to employment and absorption of persons engaged on daily wages. That eligibility criteria for absorption in terms of Para 2,3 of the settlement are not fulfilled by the workman. Management's witness denied that workman was continuously working from 25-5-90 to 27-7-02. Relationship of employer employee is relied by management's witness. Management's witness in his cross examination, says as per circular dated 19-10-89, 31-3-90 any employees were not regularized. Daily wage employees were engaged prior to 1989 though there was no provision for engaging casual employees prior to 1989. Daily wage employee were engaged as per need of work. Management's witness says he was working in Khandwa branch in 1978 and presently working from 25-9-2011. He did not see record of daily wage employees. No record is in the Bank regarding working of workman. He had not seen any such record. Bank employees are paid bonus. Exhibit W-3 bears signature of the Branch Manager. Presently daily wage employees are engaged in the Bank for cleaning, sweeping work serving tea, supplying water etc. Bank opens at 9.30. Daily wage employees comes for work at 10 AM. Daily wage workers are given break between 2 to 2.30 PM. Thereafter Bank is closed, time is not fixed for closing the Bank. Daily

wage employees are paid from petty cash, its record is maintained. Workman was paid daily wages under voucher. Vouchers are not produced on record. In his re-examination, management's witness says circular dated 19-10-89, 21-3-89 issued by Head office, Exhibit M-1, M-2 are admitted in evidence.

10. The evidence of management's witness is silent what happened to the payment vouchers w.r.t. the workman. When workman was paid wages under voucher, absolutely no evidence is adduced why the payment vouchers are not produced by 2nd party. Workman has filed application for production of documents on 13-11-09. Application was opposed by management on the ground that Bank does not have any record asked by workman. Bank has no liability to prove the case of workman. Bank has withheld material documents about working of 1st party workman. Payment of bonus to workman is proved from document exhibit W-3. W-4 shows working days of workman 37 days in 1991-92, 52 days in 1994-95, 120 days in 1996, 143 days in 97. The workman is terminated from 28-7-02. The dispute is referred as per order dated 9-10-06 about 4 years from alleged date of termination. Management is not explaining what happened to the documents about payment of wages to the workman during 12 months preceding termination of his service. Therefore circumstances justified adverse inference against management that management would have produced payment vouchers about working of 1st party, it would have supported claim of workman that he completed 240 days continuous service preceding 12 months of his termination.

11. Learned counsel for 2nd party Shri Bhattacharjee relies on bunch of citations and copies of awards. Ratio held in case of

Himanshu Kumar Vidyarthi versus State of Bihar and others reported in 1997-SCC(L&S) 1079. Their Lordship held every department of Government cannot be treated as industry.

In present case, 2nd party Bank is carrying banking business is not excluded from Section 2(j) of ID Act.

In case of Karur Vyas Bank Employees Union versus Presiding CGIT Bangalore reported in 1988 LAB.I.C.1746. Their Lordship dealing with termination of Bank employee of the services of persons utilized intermittently which arose only on certain occasion. Employment is of casual nature and not concerned with working of the Bank.

Ratio cannot be applied to case at hand as 2nd party has not adduced evidence what kind of work workman was doing. Whether workman was doing the work not connected with working of the Bank. Evidence of 1st party workman is that he was working as peon is not shattered.

12. Learned counsel for management Shri Bhattacharjee also relies on ratio held in

Case of Range Forest Officer versus S.T.Hadimani reported in 2002 SCC(L&S) 367. Their Lordship dealing with Section 25-F of ID Act and completion of requisite length of continuous service held that where workman claimed that he worked more than 240 days in a year preceding termination was denied by employer. It was for claimant to lead evidence to applicant for that purpose.

In present case, besides evidence of workman, in Exhibit W-3, working days are shown 1st party workman submitted application for production of documents application was opposed. Management's witness in his evidence says workman was paid wages from contingent fund under voucher. The vouchers are not produced by management. Any reasons are not explained by it in evidence of management's witness.

13. In case of Surendra nagar District Panchayat versus Dahyabhai Amarsingh reported in 2006-SCC(L&S) 38. Their Lordship dealing with protection of Section 25-F of ID Act is available when their exist relationship of employer employee, he is workman under Section 2(s), (iii) establishment in which he is employed in industry within meaning of industry. Evidence discussed earlier complies with all those conditions, workman is entitled to protection of Section 25-F of ID Act.

14. Shri Bhattacharjee learned counsel for 2nd party also relies on ratio held in Secretary, state of Karnataka versus Uma Devi reported in 2006-SCC-L&S-753. Ratio held in Umadevi's case cover termination in violation of Section 25-F of ID Act. Therefore ratio cannot be applied to case at hand.

15. Termination of service of workman without issuing notice, not paying retrenchment compensation when workman was working for about 12 years and management has withheld documents of payment vouchers, termination of workman is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

16. Point No.2- In view of my finding in Point No.1 workman is terminated in violation of Section 25-F of ID Act, question remains for consideration whether workman is entitled for reinstatement with backwages.

17. Learned counsel for 1st party relies on ratio held in case of

Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10(SCC 324.) The above cited case does not pertain to termination in violation of Section 25-F of ID Act. Their Lordship dealing with reinstatement with backwages and in case of illegal termination from service, the principles were reiterated that reinstatement such employee to claim denial of backwages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay backwages.

In case of Ashok Kumar Sharma versus Oberoi Flight Services reported in 2010(1)SCC-142. Their Lordship held with compensation Rs.60,000 to full and final settlement unjustified, compensation Rs.2 Lakhs was directed to be paid.

The facts of above cited case are not comparable as workman was found carrying 30 KLM (foreign airline) soup spoons illegally in his shoe. Above cited case was not termination of service for violation of Section 25-F of ID Act.

In recent judgment reported in 2015-IV-MPLJ-5 between Jasmer Singh versus State of Haryana. Their Lordship dealing with termination of daily wage workman working more than 240 days in a calendar year without complying Section 25-F, G.H of ID Act held termination void ab-initio and reinstatement with continuity of service with full backwages was upheld.

18. Considering ratio held in said case as termination of workman is in violation of Section 25-F of ID Act and evidence of workman that he is unemployed after termination of his service remained unchallenged. Management has not adduced evidence about gainful employment of workman, workman is entitled for reinstatement with full backwages. Accordingly I record my finding in Point No.2.

19. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) 2nd party is directed to reinstate workman with full backwages.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1324.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 11/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/81/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 24th June, 2016

S.O. 1324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 24.06.2016.

[No. L-12012/81/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/11/2010

Shri Jagdish Prasad Saket,
S/o Molai Prasad,
VIII- Semri, PO Bhamra,
Distt. Rewa (MP)

... Workman

Versus

Branch Manager,
Allahabad Bank,
Branch Semriya,
Distt. Rewa (MP)

... Management

AWARD

Passed on this 10th day of May, 2016

1. As per letter dated 8-1-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/81/2009-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of the Allahabad Bank in terminating the services of Shri Jagdish Prasad Saket is legal and justified? What relief the workman is entitled for and from which date?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim. Case of Ist party workman is that he was engaged on daily wages by 2nd party in 2002. He was continuously working till 7-10-07. He had completed more than 240 days continuous service. His performance was satisfactory. He was working on vacant post for 5-6 years. He was doing work of supplying drinking water, filling water, taking ledgers, vouchers to different tables etc. his services were orally terminated. He was not served with notice. Retrenchment compensation was not paid. Policy of last come first go was not followed. After termination of his service, 2nd party engaged other persons. Termination of his service is in violation of provisions of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party denied workman was employed in the Bank on daily wages. He was never engaged by Bank by Competent Authority on daily wages. Workman was not retrenched by 2nd party on 7-1-07. As per 2nd party, Semariya branch had hired a Generator set on monthly rental basis from one another person. Workman was visiting the branch in connection of generator set when electric supply was cut off. Workman never worked in the branch. He was not instructed by authorities, he was not given by authorities for his work. All adverse contentions in statement of claim have been denied. 2nd party submits Ist party is not covered as workman under Section 2(s) of ID Act. Section 25-F of ID Act is not applicable to the Bank. There was no question of following principles of last come first go. Ist party has no right to claim employment with 2nd party. On such ground, 2nd party prays that reference be answered in its favour.

4. Workman filed rejoinder reiterating his contentions in statement of claim. That he completed more than 240 days continuous service. He was terminated without notice, retrenchment compensation was not paid to him.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|--|
| (i) Whether the action of the management of the Allahabad Bank in terminating the services of Shri Jagdish Prasad Saket is legal and justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

6. The term of reference pertains to legality of termination of services of workman. Workman filed affidavit of his evidence supporting his contentions that he was working with 2nd party as labour from 2002 till 7-10-07 continuously he has completed more than 240 days continuous service for 5 years. His services were terminated without notice. Retrenchment compensation is not paid to him. Seniority list as per Rule77 was not displayed on notice board his services were illegally terminated. From evidence of workman, documents Exhibit W-1 to W-4 are admitted. In his cross-examination, Ist party workman says appointment order was not given to him. He received information from Branch Manager about the vacancies. Shri Ashok & Kamlesh were also appointed along with him. His name was sponsored through Employment Exchange, he was interviewed on 17-7-07. Above facts are not disclosed by workman in his statement of claim. In his further cross-examination workman says his attendance was maintained in register. Payment was made to him at end of week. In Exhibit W-1, 2 designations are written but one signature has been made. Exhibit W-1 is not written on letter head of the Bank. In Exhibit W-2, his name is not written. His name is written on reverse side. He denies that Exhibit W-2 is forged documents. Exhibit W-2 does not bear seal of the Bank workman denies that he was working with the contractor who provided generator to the Bank. Exhibit W-2 receipt was not received by

him from office. Thus evidence of workman shows that document Exhibit W-1 bearing two designation and single signature. Exhibit W-1 also bears endorsement at bottom recommending the 1st party workman. Who is author of endorsement is not clear. Exhibit W-2 is receipt of payment of Rs.360 from miscellaneous account. Exhibit W-2 also shows said payment was made for pending work. Workman in his cross-examination says he has signed on its reverse, no date is mentioned. Document appears suspicious it cannot establish the workman was paid said amount for working in the Bank. Exhibit W-3 is application submitted by workman. Exhibit W-4 also does not bear name or signature of workman. The documents produced by workman cannot corroborate his evidence.

7. Workman filed evidence of Shri Ashok Kumar Sathe. He tried to support he had seen workman was working in the branch from 2005, his services were terminated in 2007. The age of Shri Ashok Kumar is shown 23 years when his affidavit was filed in 2013. If evidence is accepted to be proved in 2005, his age would be 15 years. For above reasons, his evidence cannot be accepted that during the year 2005 to 2008, he was working in the bank and his evidence in cross examination shows he was orally terminated 2008. He did not challenge his termination. Evidence of Shri Ashok Kumar is not cogent and reliable. The evidence of workman and evidence of Ashok Kumar are not free from suspicion.

8. Management's witness Ankit Kumar supported contentions of management in Written Statement that workman was never engaged, he was not retrenched. That Ashok Kumar Saket was not employed in the Bank. In his cross-examination, management's witness says he is working in the branch from August 2015. He seen record about service, name of workman was not found. Said document is not produced. Management's witness admitted Exhibit W-5,6. He denied payslip. Management's witness denies that workman worked more than 240 days during each of the year.

9. Exhibit W-5,6 do not bear name or signature of workman. Exhibit W-5 pertains to certain loan transaction of the Bank. Evidence of workman about his continuous working in the bank 240 days preceding 12 months of his termination is not cogent and reliable. Therefore workman is not entitled to protection of Section 25-F of ID Act.

10. Learned counsel for 1st party relies on ratio held in case BSNL versus Bhirumal reported in 2015(1)MPLJ-23. As workman failed to establish he was continuously working more than 240 days preceding 12 months of his termination, ratio held in the case cannot be applied to case at hand. For same reasons, case of Sanjay Kumar versus Chief Executive Officer, Ratlam reported in 2010-MPLJ-457, Tapash Kumar Paul versus BSNL reported in 2015(1)SCCD-200 (SC)-299 cannot be applied to case at hand. For reasons discussed above, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 45/95) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/311/94-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 24th June, 2016

S.O. 1325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/95) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 24.06.2016.

[No. L-12012/311/94-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/45/95

Shri Man Singh,
S/o Shri Shrichand Verma,
Nehru Colony, Bhatipur, Morar,
Gwalior (MP)

... Workman

Versus

Regional Manager,
Central Bank of India,
Nirma Bhavan, Gwalior

...Management

AWARD

Passed on this 12th day of April 2016

1. As per letter dated 28-2-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/311/94-IR(B-2). The dispute under reference relates to:

“Whether the action of the management of Central Bank of India, Gwalior in dismissing Shri Mansingh, peon from service w.e.f. 23-11-90 is legal and justified? If not, to what relief is the said workman entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/3. Case of Ist party workman is that he was appointed as peon/daftary on 3-3-1981 in Aswar branch, Distt. Bhind by Divisional Manager. He was working in said branch till FIR was submitted to Police Station, Aswar by Daulatram Khatar Officer of the Bank. On said report, offence under Section 381 read with 120 B IPC was registered against him and Shri M.L.Sharma Branch Manager, Janki Prasad Head cashier. Some outsiders were also shown involved in the incident but police did not file challan against them. Criminal case No. 44/84 was prosecuted before JMFC. Vide judgment and order dated 2-2-1988, workman and other officers were acquitted of offence under Section 381, 120 B of IPC. The charges were not proved. Government of MP challenged judgment of acquittal filing the appeal before Hon’ble High Court. The appeal is pending. Workman was suspended on 9-6-83. Suspension continued till 18-2-89.

3. Workman was served with Ist chargesheet on 18-11-1988. The chargesheet was in abeyance. Workman was not intimated about appointment of Enquiry Officer R.S.Agrawal, Presenting Officer, enquiry was kept pending. Chargesheet was again issued to workman on 16-3-89. It was also in abeyance. Workman had requested Hindi translation of chargesheet. Workman submitted reply to chargesheet on 31-5-89 denying charges against him. Enquiry Officer fixed enquiry on various dates. Shri R.D.Gupta was appointed as Presenting Officer. Workman was not supplied documents alongwith list with names of witnesses. The copies of statement of witnesses were also not supplied. Copy of Enquiry Report dated 6-5-89 was not supplied to him. Ist party workman further submits that he was directed to appear in the enquiry. The enquiry conducted was of preliminary nature. The Defence Assistant H.W.Choudhary from Regional Office, Pune was allowed. The documents were verified. Enquiry was adjourned to December 1989. Enquiry Officer had cross-examined the management’s witnesses. Enquiry Officer allowed examination of witness of Shri G.K.Mittal. His name was not included in the list of witnesses. Material witnesses Shri M.C.Bhavar, Darshanlal Sethi were not cross examined. Notices were not issued to them. For attending Enquiry Proceedings, Enquiry Officer submitted his report without considering his contentions. Showcause notice was issued to workman on 8-9-90. He submitted reply to it on 5-10-90. On same day workman was called for personal hearing. Workman reiterates that enquiry was not properly conducted. He was not allowed proper opportunity for his defence. Documents were not supplied. Workman was acquitted by criminal court vide order dated 2-2-1988. Chargesheet was issued to workman with objection to dismiss from service. Judgment in criminal case No. 44/84 acquitting workman and other officers was disobeyed. Enquiry Officer was not impartial. Workman was denied opportunity for his defence. Enquiry conducted in violation of principles of natural justice. Witness Darshanlal Sethi Head Cashier Chawla were not examined in enquiry.

4. Ist party workman further submits that he had preferred appeal challenging order of his dismissal order dated 23-11-90. The appeal was not decided within 60 days as per the rules. That appeal No. 54/89 was dismissed by Hon’ble High Court on 17-5-96. The order of acquittal of workman & others was upheld. Workman further submits that findings of Enquiry Officer are perverse. Enquiry Officer submitted his report to please the management. Wages of suspension period was not paid. Punishment of withholding 8 increments of Mittal was issued. Punishment of dismissal imposed workman is discriminatory. That after dismissal from service, he is unemployed. His family is facing hardship for survival. On such ground, workman prays for his reinstatement with backwages.

5. 2nd party filed Written Statement at page 34/1 to 34/23 opposing claim of workman. 2nd party submits that reference is made belatedly is not tenable. That 2nd party is banking company constituted under Banking Company’s Act 1970. It is nationalized Bank. Service condition of sub staff and award staff are covered by Ist Bipartite Settlement dated 19-10-66. Ist party workman was appointed as peon on 3-3-1981 and posted at Aswar branch in Bhind District. Workman was deputed by Divisional office, Gwalior with letter dated 2-4-83 on bringing security books as per indent

dated 24-3-83. DD books upto Rs.1000/- 2 books, DD books from 1001 to 2000- 2 books MMDC books-2 on 4-4-1983, workman acknowledged in writing receiving security books from stationary department from Divisional office. On reaching Aswar branch on 5-4-83, workman did not affix rubber stamp of the branch on leaves of the security books brought by him. On 5-4-83, workman after obtaining set of book from Branch Managers, Shri M.N.Sharma operated cash shelf of the branch with Head Cashier J.Chawla. workman in collusion with head cashier Chawla didnot keep in cash shelf and fraudulently torn leaves from Book No. 657851 to 657990. The drafts were fraudulently encashed at different branches of the Bank for amount Rs. 3,13,549/- After finding huge amount was encashed at different branch. Workman was involved in said fraud. Notice dated 1-6-83 was served on workman calling his explanation. Explanation submitted by workman was found unsatisfactory. At initial stage, workman was served with chargesheet dated 18-11-88. In suppression of said chargesheet, fresh chargesheet was issued to workman on 16-3-89 with hindi translation giving the details of the drafts fraudulently encashed. List of documents and witnesses was supplied to workman. Shri R.S.Agrawal was appointed as Enquiry Officer. Workman submitted reply to chargesheet on 24-5-89. His reply was found unsatisfactory. Management decided to conduct enquiry as per letter dated 27-4-89. Enquiry commence from 6-5-89 after satisfying that workman received entire set of documents and list of witnesses. Enquiry was fixed on various dates 25-5-89, 31-5-89, 24-10-89, 20-11-89, 7-12-89, 9-12-89. Evidence of management's witness Shri J.B.Gulsalvis, Mittal Sharma, Agrawal was recorded in Enquiry Proceedings. They were cross examined by Defence Representative. Enquiry was closed on 11-12-1989. The written briefs were submitted by both parties. Enquiry Officer submitted his report. Showcause notice was issued to workman on 30-8-90 along with Enquiry Report.

6. Disciplinary Authority considering entire evidence agreed with findings of Enquiry Officer, punishment of dismissal was imposed against workman on 23-11-90. 2nd party reiterates that enquiry was properly conducted. If enquiry is found vitiated for any defect, management be given chance to lead evidence on other issues. Appeal preferred by workman was rejected giving detailed reasons. 2nd party reiterates that charges alleged against workman are proved from evidence in Enquiry Proceedings. It is denied that workman as not supplied list of documents, list of witnesses. It is denied that findings of Enquiry Officer are perverse. W.r.t. examination of Shri G.K.Mittal, Agrawal, it is submitted that Enquiry Officer did not cross examine them. The witnesses were allowed by Enquiry Officer within his powers. There is no provision in bipartite settlement restricting management to examine witness Shri M.L.Sharma. The allegations of workman in that regard are baseless. All adverse contentions of workman have been denied. The police authorities had filed case before Registrar, District Bhind. It was decided on 2-2-88 , State Government preferred appeal in Hon'ble High Court of MP, Gwalior bench. 2nd party further submits that chargesheet was issued to workman regarding his involvement in fraud causing loss to the management of Rs.3,13,549/. As per practice, if an employee is acquitted in Court, it's open for management to proceed DE against the employee. 2nd party has not violated any rule of bipartite settlement by issuing chargesheet. Management taken departmental action as per the bipartite settlement. It cannot be said contempt of court. Enquiry was properly conducted. It is incorrect that workman was punished twice for same misconduct. Workman could be permitted to engage legal practitioner for his defence only when management representative is legal practitioner. As management representative was not legal practitioner, workman was not allowed to engage lawyer for his defence. Management was free to produce or not to produce any witness. Merely not producing Sethi, Chawla, Kathar, it cannot be said that charges against workman are not proved. It is derogative on part of management to draw any charge with regard to management's witnesses Mittal and Agrawal. 2nd party submits that it is derogative for management to add or delete witnesses from the list. It is reiterated that findings of Enquiry Officer are considered by Disciplinary Authority and punishment was imposed. Workman was found guilty of gross misconduct in DE Therefore he was not paid difference of wages for period of suspension. The punishment awarded to Shri M.L.Sharma has no relevance with punishment imposed against workman. It is denied that officers tried to save his subordinate by awarding lesser punishment. Hon'ble High Court dismissed criminal appeal on 17-5-96. 2nd party prays that reference be answered in its favour.

7. As per order dated 20-8-2014, enquiry conducted against workman was found proper and legal.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|--|--|
| (i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings? | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

9. From pleadings between parties, there is no dispute that workman alongwith Branch Manager and cashier were prosecuted in Criminal Case. They were acquitted by JMFC. The appeal preferred by Government of MP was dismissed by Hon'ble High Court. The copy of judgments are produced at Exhibit W-1, W-2. Workman has alleged that management has committed contempt of judgment of criminal court by issuing chargesheet. The careful reading of judgment by criminal court at Exhibit W-1 shows that workman and Mittal Lal, Janki Prasad Head cashier were prosecuted for offence under Section 381 120-B IPC. While dismissing appeal filed by Government of MP, Hon'ble High Court vide judgment dated 17-5-96 observed- " the fraud in the Bank information was received when inspection was held in May 1983. The respondents (accused) were suspected for the loss of drafts and subsequent preparation of six drafts in favour of Prakash Chandra Jain. That Prakash Chandra Jain who had withdrawn the amount could not be traced. W.r.t. Mithul Sharma it was observed that since he died, appeal against him stands abated. Chargesheet issued to workman is produced at Page 5/14 dated 16-3-89 pertaining to workman Mansingh Verma peon cum dartary at Aswar branch was deputed to Divisional Office Gwalior vide Aswar branch letter dated 2-4-83 with the instructions to bring among other items of stationery- security books as requisitioned by Branch vide their indent dated 24-3-83. 2 books of DD upto Rs.1000 and 2 books of DD from 1001/- Rs to 2000/- and 2 books of MMDC were received by the workman from stationery department. After reaching Aswar branch on 5-4-83, after getting the above DD books from the then DM office on 4-4-83, workman did not affix the rubber stamp of the branch on the leaves of the security books brought by him. The said act of gross negligence facilitated the fraudulent use of one DD book Sl.No.657851 to 657900. Said DD books were encashed at different branches of the Bank . 2nd charge pertains to on 5-4-83, workman after obtaining the set of keys of the then Branch Manager Mr. M.L.Sharma, workman operated the cash safe of the branch together with Mr. J.D.Chawla the then Head Cashier for keeping the security books brought by him from DM office. Workman Mansingh deliberately did not keep in the cash safe one DD Book Sl.No.657851 to 657900. The act of workman resulted in fraudulent use of DD Book and 7 DD leaves causing financial loss of Rs. 3,13,549/- The charge against workman is not similar in challan submitted by police in criminal case for offence under Section 381 read with 120 IPC. Chargesheet issued to workman in enquiry doesnot pertain to committing theft by him in collusion with other officers. Therefore acquittal of workman in criminal case and rejection of appeal by Hon'ble High Court cannot be said relevant.

10. Question needs for consideration involved in present case is whether charges alleged against workman in charge dated 16-3-89 are proved from evidence in Enquiry Proceedings. Management examined 4 witnesses in Enquiry Proceedings, defence witnesses were also examined. Evidence in Enquiry Proceedings needs to be considered. In Enquiry Report, Presenting Officer Shri R.D.Gupta submitted his brief Exhibit M-6. Exhibit M-7 is showcause notice issued to workman. M-8 is reply to show cause notice. Exhibit M-9 is order passed by Appellate Authority. The elaborate discussion of evidence of management's witnesses is seen.

11. Evidence of management's witness MW-1 Shri J.B.Gonsalves at Page 35/38 to 35/45 shows that said witness was working as Assistant Regional Manager Gwalior. He has narrated procedure about issues of stationery to branches made to the representations. While functioning as DDO at Gwalior, DD book was issued to Aswar branch bearing No. 657851 to 657900 was missing. Said book was issued to branch through bearer Mansingh Verma peon i.e. workman. The indent No. was 181320 dated 24-3-83. The indent was signed by Branch Manager along with letter of authority signed by Branch Manager. On 28-5-83, Divisional Office received message from Zonal office, Lucknow receiving information of fraudulent replacement of DD of huge amount at Kanpur. The contents of telex were that DD printed No. 657877 dated 15-4-83 drawn on Meston Road Kanpur for Rs.25,450 issued by Guna branch. The witness of management has given details of the amount withdrawn by the DDs Rs. 25,450/- &Rs.45,448.50. the same DD books was issued to Mansingh Verma who signed acknowledgement in receipt of all stationery. The indent ME-4B . Exhibit ME-5 is letter dated 2-4-83 of Aswar branch addressed to Divisional Officer, Gwalior for supply of stationery. ME-7 are copies of challan prepared at DD office addressed to Aswar branch. Said witness has verified all items including Sl.No.5. ExME-21 is folio 61 of the security registers. The details of the stock of DD books in series of Rs.1001 to 5000. The numbers of DDS are also narrated by witness. ME-12 is seizure of list of documents. That witness was on leave on 4-4-83. Workman had come from distant branch. He could not be returned empty handed.

12. MW-2 Shri G.K.Mittal in his evidence has confirmed circular issued by head office dated 16-4-82 which contain specimen signature as listed in the circular. That MW-2 had handed over the signature slips to the Daftari Shri Mansingh Verma for posting in the relative specimen signature album of the branch. MW-2 further says that workman he couldnot see whether workman pasted all the specimen signature in the branch album as he was busy in routine work. Workman had confirmed about pasting of all specimen signatures.

13. MW-3 Shri M.L.Sharma is on the point of issuing indent numbers to workman. That all the stationery indents are in writing of workman. Workman was given only one copy for Divisional office, Gwalior. In his cross-examination, MW-3 says all security items DD Books, remain in safe custody under dual control. Evidence of MW-4 Shri M.L.Agrawal is that Shri Sethi called him in his cabin and shown him a telex received from Zonal office wherein a mention was made of some fraudulent drafts issued from some of branches of Gwalior Region. That this is security item

issued register of Divisional office, Gwalior which is scrutinized and found that the DD book relating to DD narrated in Telex has been issued to Aswar branch. Out of security items issued to Mansingh Verma received by him one DD book pertaining to DDs from 1000 to 5000 was missing. The seal of Aswar branch was not affixed on the security items.

14. The Defence Witness Mansingh in his cross says that at the relevant time, Daftary/ peon was putting seal on stationery received from Divisional Office.

15. The evidence discussed above is clear that workman was working as Daftary. He received stationary from Divisional office, he has not affixed branch seal of stationery including DD. He had taken key for keeping security document in the shelf. Scope of judicial review is restricted. The evidence cannot be re-appreciated. The evidence discussed above supports findings of Enquiry Officer. The findings of Enquiry Officer therefore cannot be said perverse. The evidence is sufficient to prove charges against workman. For above reasons, I record my finding in Point No.1 in Affirmative.

16. Point No.2- In view of my finding in Point No.1, misconduct alleged against workman is proved. In notes of argument submitted by workman and pleadings in statement of claim that Shri M.L.Sharma Branch Manager was imposed punishment of withholding 8 increments and reinstated in service, workman has been discriminated. The punishment of dismissal against workman is excessive. However no document is produced by workman about the charges alleged against Shri Sharma Branch Manager and punishment imposed against him. Therefore the contentions of workman in that regard cannot be accepted. The misconduct proved against workman is of serious nature. He was dealing with confidential documents. He had brought stationery DD books for amount upto Rs. 1000 and Rs.1000 to 5000. He not affixed branch seal on it. He operated shelf where the security documents were kept. The proved misconduct of workman is of serious nature. Working in the Bank is carried on confidence with the employees therefore the punishment of dismissal imposed against workman cannot be said unreasonable or excessive. For above reasons, I record my finding in Point No.2.

17. In the result, award is passed as under:-

- (1) Action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1326.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स जैट एयरवेज (इंडिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, इन्कार्कुलम के पंचाट (संदर्भ संख्या 53/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-11012/12/2002-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th June, 2016

S.O. 1326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam (Ref. No. 53 of 2006) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Jet Airways (India) Ltd. and their workmen, which was received by the Central Government on 24.06.2016.

[No. L-11012/12/2002-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Tuesday the 31st day of May, 2016/10th Jyaistha, 1938)

ID 53/2006

(Formerly ID No. (C) 4/2002 of Labour Court, Kozhikode)

Workman : Shri K. N. Suresh Kumar,
 S/o late K. Narayanan Nair,
 Sree Path, C/o Kala Rice Mill,
 Kaithakunda,
 P.O. – Ayikkarpadi, Ermad TK,
 Malappuram Dist.

By Adv. Shri P. E. Rajagopal

Managements : 1. The Station Manager,
 Jet Airways(India) Ltd.,
 29, Mavoor Road,
 Calicut – 673016

2. The Chairman and Managing Director,
 Jet Airways(India) Ltd.,
 41/42, Maker Chambers III,
 Nariman Point,
 Mumbai – 400021.

By M/s. Menon & Pai

This case coming up for final hearing on 17.05.2016 and this Tribunal-cum-Labour Court on 31.05.2016 passed the following:

AWARD

This is a dispute referred by the Central Government as per clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947).

2. The dispute referred for adjudication is:

“Whether the action of the management of M/s Jet Airways (India) Ltd. in dismissing Sri. K.N.Suresh Kumar, Sr. Security Asstt. From service is just, fair and legal? If not, to what relief is the workman concerned entitled?”

3. The dispute was originally referred for adjudication before the Hon’ble Labour Court, Calicut as per reference order No.L-11012/12/2002-IR(C-I) dated 28.08.2002. Before the Hon’ble Labour Court, Calicut the parties entered appearance through counsel and submitted their pleadings. From there the validity of the domestic enquiry was considered as the preliminary point. On the preliminary point; MW1 and WW1 were examined and Ext.M1 was the document marked. The Hon’ble Labour Court, Calicut found that the domestic enquiry is invalid. Against that order the management preferred Writ Petition WP(C) No.24324/2005-U before the Hon’ble High Court of Kerala, Ernakulam. As per the judgment dated 18.03.2011 in WP(C) No.24324/2005(U) the Hon’ble High Court of Kerala, Ernakulam held as follows:

“19. The order Ext.P4 being a preliminary one, does not call for any interference with regard to the two aspects, i.e. the finding on the alleged violation of the principles of natural justice and the setting aside of the enquiry report. But, I am of the view that the crucial observations in paragraphs 10 and 12 which are quoted in para 13 above, need not have been there, as the final award is yet to be passed. Therefore, the said observations are expunged, to avoid any future controversies in the matter. Ext.P4 is modified to that extent”

Against the judgment in WP(C) No.24324/2005 the management preferred Writ Appeal WA No.674/2011 before the Hon’ble High Court of Kerala, Ernakulam. As per the judgment dated 15.11.2011 the Hon’ble High Court of Kerala, Ernakulam dismissed the Writ Appeal. In the meantime this case was transferred to this Court and it was numbered as ID 53/2006. After the disposal of Writ Appeal No.674/2011 by the Hon’ble High Court of Kerala the parties entered appearance before this Tribunal.

4. The contentions of the workman in brief are as follows:

The workman joined the services of M/s.Jet Airways as security assistant on 03.06.1993. He continued in service till 01.06.2001. At that time he was working as senior security assistant. He was suspended from service on 01.06.2001. On 23.07.2001 the management issued a charge sheet to him alleging – (1) riotous and disorderly behaviour during working hours at the establishment or any act subversive of discipline;(2) willful insubordination or disobedience whether alone or in combination with others to any lawful and reasonable orders of a superior.

5. The charge sheet issued to the workman is vague and not specific. It was issued to the workman so as to wreck vengeance against him and with the intention to cancel his training programme. The management has not issued any show cause notice before issuing the charge sheet. Without obtaining explanation from the workman in relation to the allegation of misconduct, the management decided to conduct a domestic enquiry against him. In the charge sheet itself the management intimated the appointment of enquiry officer, the date, time and place of enquiry. On the date fixed for the enquiry the workman reported before the enquiry officer at 11:00 am. The enquiry officer informed the workman to remain outside. At about 12:00 O' clock the enquiry officer called the workman and directed to put his signature in ten blank white papers and the workman obliged the same. The workman handed over his explanation to the charge sheet. Subsequently the enquiry officer directed the workman to meet him in person on 03.08.2001 at his residence. On 03.08.2001 the workman handed over Exts.W1 to W4. The enquiry officer further directed the workman to prepare a statement as dictated by him. The workman obliged the enquiry officer and prepared a statement as dictated by the enquiry officer. The workman put his signature in that statement as directed by the enquiry officer. Further the enquiry officer directed the workman to write in the statement that he has no witness to be examined in the enquiry. The enquiry officer informed the workman that the allegations raised by the management are false and that he will not accept the case of the management.

6. After filing the report by the enquiry officer the management directed the workman to make his submissions against the findings of the enquiry officer. The workman submitted a detailed explanation stating that there was no proper enquiry and that the enquiry officer has not conducted the enquiry in a just, proper and reasonable manner and that there was denial of natural justice against the workman in conducting the enquiry. In presence of the workman the enquiry officer has not examined any witnesses. No opportunity was afforded to the workman to cross examine the witnesses on the side of the management. There was irregularity, impropriety and denial of natural justice in conducting the enquiry. The enquiry was not independent, free, fair and just.

7. The workman was on leave on medical ground on 15.05.2001, 16.05.2001 and 17.05.2001. This aspect can be revealed from the muster roll and monthly leave statement for May, 2001 for security staff, Jet Airways, Calicut. The workman was nominated to attend the training programme at Mumbai scheduled to commence from 16.05.2001. The workman received instruction regarding the same from the Area Manager Security (South India) to leave for Mumbai on 15.05.2001. Accordingly, booking was made for travel to Mumbai on 15.05.2001 from Calicut in Flight No.9W 424/CCJ-BOM scheduled to depart from Calicut at 15:30 hours. On 15.05.2001 the workman reached the airport by about 14:30 hours. From there he was provided with the boarding pass No.Ser No.16, seat No.3A. He was checked in by Miss Preeja Jayaram within 15 minutes. Then the workman was expecting the journey. While so the Traffic Assistant Mr. Sudheep Narayanan directed the workman to hand over the flight ticket and boarding pass to him; to be handed over to Mr. Thomas Mathew, Airport Manager. After handing over the boarding pass and flight ticket to Mr. Sudheep Narayanan, the workman was directed to get himself examined by a doctor. When the workman reached the doctor's clinic it is informed that the doctor was on leave and would not be available. The allegation that while entering the airport through the main gate at about 14:25 hours on 15.05.2001, from his facial expressions and mode of walking Captain Ramakrishnan, Security Officer and Mr. Thomas Mathew, Airport Manager suspected that the workman was under the influence of alcohol or sedative, is false and incorrect. The further allegation that they questioned the workman in presence of one Mr.Nikhil who confirmed that the workman was profusely smelling with alcohol, is also false and incorrect. The further allegation that on questioning by Captain Ramakrishnan as to whether the workman consumed alcohol he replied in the affirmative, is false and incorrect. The averment that the Airport Manager directed him to obtain doctor's certificate before checking in for the flight since he was under the influence of alcohol and it was against the safety norms so as to allow to board the flight, is absolutely false. The further allegation that Captain C. Ramakrishnan directed the workman to follow him to the Airport authority doctor's room for examination is false and incorrect. The allegation that the workman refused to obey the instructions and vanished from the place and later on found near the airport snack bar is also incorrect. The allegation that the Airport Manager refused to accept the workman on board as he was under the influence of alcohol and that he failed to produce the doctor's certificate before boarding the flight is also incorrect. The averment that Mr. Suresan, Senior Security Assistant witnessed the disorderly behaviour of the workman and informed the matter to Captain C. Ramakrishnan is also false. The averment that Captain C. Ramakrishnan informed the workman that he had violated the safety and security norms and in case he is not behaving properly the matter will be reported to the police and on coming to know about the same the workman left the airport premises, is also false.

8. The disciplinary authority has not issued copy of the enquiry report to the workman before accepting the same and acting upon it. The punishment imposed by the disciplinary authority is disproportionate to the allegations in the charge sheet. The workman has stated that the entire disciplinary proceedings initiated against him and the punishment imposed is in violation of the principles of natural justice. The order of termination issued by the management is illegal, unjust, arbitrary and without any basis. The workman has requested to reinstate him with back wages and other benefits.

9. The contentions in the written statement submitted by the management in brief are as follows:

The management has denied all the averments in the claim statement filed by the workman except those that are specifically admitted. The dispute referred for adjudication is:

“Whether the dismissal of K. N. Suresh Kumar is justified? If not, the reliefs he is entitled to?”

The workman was employed as senior security assistant under the management at the Calicut Airport. On 15.05.2001 he was expected to board flight No.9W-24/CCJ/BOM to Mumbai, to attend a training programme. The flight was scheduled to depart from Calicut at 15:30 hours. At about 14:25 hours the workman was walking towards the baggage screening machine. It was noticed that he was under the influence of alcohol. The security officer Captain Ramakrishnan questioned the workman and he admitted to have consumed alcohol. Therefore, the Airport Manager directed the workman to obtain a certificate from the doctor at the airport before checking in. He was instructed to follow the security officer to the airport doctor's room for examination. He refused to obey the instructions and disappeared from the scene. Subsequently he approached the security officer and the airport manager with a request to accept him on board. His request was turned down. He proceeded to the aircraft through the staff entry gate with baggage and without boarding pass, bypassing security checks and thereby violating the safety and security norms. The said act on the part of the workman constituted serious misconduct. A charge sheet dated 23.07.2001 was served on him alleging the misdeeds – 1. Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline; and 2. Willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.

10. The explanation to the charge sheet submitted by the workman was not satisfactory. Hence the management decided to conduct an enquiry in relation to the charges alleged against him. They appointed an advocate to conduct enquiry in this regard. The enquiry was conducted on 02.08.2001 after giving proper notice of enquiry to the workman and after affording sufficient opportunity to him to substantiate his contentions. Before the enquiry officer, on behalf of the management three witnesses were examined and the workman cross examined those witnesses. After completing the examination of the witnesses on the side of the management the workman was asked as to whether he desired to examine any witness on his side. His answer was in the negative. At the conclusion of the enquiry; as desired by the workman he was allowed to submit a written statement. The management conducted the enquiry in a fair and proper manner in compliance with the principles of natural justice. The workman was allowed to participate in the enquiry. It was conducted in a fair and proper manner. The enquiry officer submitted a report with the finding that the charges alleged against the delinquent workman have been proved.

11. The management forwarded a copy of the enquiry report to the workman to make his submissions against the finding of the enquiry officer. The workman was informed about the proposed punishment to be imposed on him. The reply submitted by the workman was not satisfactory. Hence the management imposed the punishment of dismissal from service. The punishment imposed by the management is in proportion to the gravity of misconduct committed by the workman.

12. The management has denied the personal allegations levelled against the enquiry officer and the irregularity in the conduct of enquiry. They have denied the allegation that the management willfully imposed the punishment on the workman so as to wreck vengeance against him. The management has stated that on an earlier occasion the workman committed grave act of misconducts and imposed punishment. According to the management the punishment imposed is just, proper and in consonance with the gravity of the offence committed by the workman.

13. After filing the written statement by the management the workman filed rejoinder reiterating the contentions in the claim statement. He has stated that before issuing the charge sheet dated 23.07.2001 no explanation was called for from him in relation to the alleged incident. So also he was not allowed to defend his case properly. According to him the action on the part of the management is vitiated. He has requested to pass an award reinstating him with back wages and continuity of service.

14. As per the order dated 14.06.2005 the Hon'ble Labour Court, Calicut held that the domestic enquiry conducted in this matter is vitiated and hence it was set aside. Against that order the management preferred WP(C) No.24324/2005(U) before the Hon'ble High Court of Kerala. As per the judgment dated 18.03.2011 the Hon'ble High Court of Kerala held that the order setting aside the enquiry on the ground that it is vitiated, does not call for any interference with regard to two aspects i.e., “the finding on the alleged violation of the principles of natural justice and the setting aside of the enquiry report”. The Hon'ble High Court of Kerala further observed that “the crucial observations in paragraphs 10 and 12 need not have been there, as the final award is yet to be passed”. Therefore the Hon'ble High Court of Kerala expunged those observations to avoid any future controversies in this matter and the preliminary order passed by the Hon'ble Labour Court, Calicut was modified to that extent. Against that judgment the management preferred Writ Appeal No.WA 674/2011 before the Hon'ble High Court of Kerala. As per the judgment dated 15.11.2011 the Hon'ble High Court of Kerala confirmed the judgment in WP(C) No.24324/2005.

15. After disposal of the Writ Appeal the parties entered appearance before this Tribunal. At the time of preliminary enquiry MW1 and WW1 were examined and Ext.M1 was the document marked. After the disposal of the Writ Appeal; MWs 2 to 5 were examined and Exts.M1(a) to M1(h) and M2 to M13 were marked on behalf of the management. WW1 was recalled and examined again and WW2 was examined and Exts.W1 to W4 are the documents marked on behalf of the workman. Heard the learned counsel appearing for both side.

16. The points arising for consideration are:

- (i) Whether the workman behaved in a riotous and disorderly manner during working hours at the management establishment or committed any act subversive of discipline as alleged in the charge sheet?
- (ii) Whether the workman has done any act amounting to willful insubordination or disobedience whether alone or in combination with others to any lawful and reasonable orders of the superiors?
- (iii) Whether the punishment imposed by the management in dismissing the workman Shri K. N. Suresh Kumar, Senior Security Assistant from service is just, proper and in proportion to the gravity of the misconduct alleged?
- (iv) To what relief the workman is entitled?

17. Point Nos.(i) & (ii):- The workman Shri K. N. Suresh Kumar; involved in this reference was employed as Senior Security Assistant at the management establishment. He joined the services of the management establishment as security assistant on 03.06.1993. On 01.06.2001 he was suspended from service alleging misconduct. Subsequently the management issued a charge sheet dated 23.07.2001 alleging: –

- (1) riotous and disorderly behaviour during working hours at the establishment or doing any act subversive of discipline; and
- (2) willful insubordination or disobedience whether alone or in combination with others to any lawful and reasonable orders of a superior.

The workman was nominated to attend a training programme at Mumbai, scheduled to commence on 16.05.2001. He received an instruction from the Area Manager Security (South India) to leave for Mumbai on 15.05.2001. His travel documents were ready to board Flight No.9W-424/CCJ-BOM to depart from Calicut Airport by 15:30 hours on 15.05.2001. The allegation against the workman is that at 14:25 hours on 15.05.2001 he was seen entering the airport through the main gate. While so the security officer Captain C. Ramakrishnan and the airport manager Shri K. Thomas Mathew suspected that the workman was under the influence of alcohol or sedative and in order to confirm their doubts they asked questions to the workman.

18. As already stated the domestic enquiry conducted by the management was found to be invalid by the Hon'ble Labour Court, Calicut. The finding on that aspect was confirmed by the Hon'ble High Court of Kerala in WP(C) No.24324/2005(U) dated 18.03.2011 and in WA No.674/2011 dated 13.07.2011. After the disposal of Writ Appeal the management side examined MW2 to MW5.

19. The allegations levelled against the workman have to be analyzed in the light of the additional evidence adduced by the parties. MW2 - the manager airport services at the management establishment has given evidence regarding the riotous and disorderly behaviour on the part of the workman on 15.05.2001 and the willful insubordination to obey the lawful orders of his superiors to get himself examined by the airport duty doctor. MW2 has stated that there is no bar in travelling the flight by a person after consuming the alcohol. MW2 has stated that if the person who has consumed alcohol if he is not causing any trouble; he can be allowed to travel in the aircraft. MW2 has stated that Ext.M1(a) is the report dated 15.05.2001 submitted by him to the General Manager, Airport Services regarding the incident. In Ext.M1(a) it is stated that on 15.05.2001 at about 14:25 hours he saw the workman entering the airport with his hand baggage through the staff entry gate. While he was walking towards the baggage screening machine MW2 had the suspicion that the workman was under the influence of alcohol. He informed Captain Ramakrishnan about his suspicion. They directed a contract worker Mr. Nikhilesh to talk with the workman and at that time MW2 and Captain Ramakrishnan realized that the workman had consumed alcohol. It is stated that MW2 informed the workman to obtain a certificate to the effect that he is fit to travel in the aircraft before closing the counters. It is stated that MW2 requested Captain Ramakrishnan to accompany the workman to the airport duty doctor for medical checkup and obtain medical certificate thereof. In Ext.M1(a) it is stated that the workman refused to obey the instruction given by MW2. According to MW2 there was willful refusal on the part of the workman to obey his instructions.

20. During cross examination MW2 has stated that on the date of the incident, on seeing the workman he suspected that the workman was under the influence of alcohol. He would further state that he informed the matter to Captain Ramakrishnan who instructed Shri. Nikhilesh. C.P. (WW2) to ascertain as to whether the workman was under the

influence of alcohol or not. MW2 has further stated that Shri Nikhilesh. C.P.(WW2) talked with the workman and realized that the workman had consumed liquor. MW2 has stated that there was a practice in some flight for the supply of liquor. He would further state that if a person, though consumed liquor, and is not causing any nuisance he could be allowed to travel in a flight. MW2 has denied the suggestion that Exts.M1(a) and M1(b) are concocted by him in connivance with Captain Ramakrishnan. MW2 has stated that he has no knowledge as to whether the workman had preferred complaint against Captain Ramakrishnan for the alleged illegal sale of liquor inside the airport.

21. WW2 – Nikhilesh is the witness examined on the side of the workman to refute the allegations levelled against him. WW2 has stated that he was employed as a contract loader in Jet Airways at Calicut Airport during the period 1999-2006. He has not supported the case put forward by the management. On an evaluation of the evidence tendered by WW2 it can be seen that he is a tutored witness hired by the workman to give evidence in support of his case. Therefore his evidence cannot be relied on for any purposes.

22. MW3 has stated that at the time of the incident he was working as the senior security assistant at the Calicut Airport. MW3 has stated that Ext.M1(b) is the report prepared in his own hand writing. He has further stated that he prepared M1(b) as directed by Captain Ramakrishnan. He would further state that the contents of the M1(b) are true and correct.

23. MW4 has given evidence regarding the order issued to the workman to attend training at Mumbai. He has issued the ticket to the workman to travel from Calicut to Mumbai. He has no personal knowledge regarding the incident occurred on 15.05.2001. MW5 was the supervisor working under the management at the Calicut Airport on the date of the incident. He has stated that Shri. Thomas Mathew informed counter staff to accept Shri Suresh Kumar. K. N. (workman) only if he produces a doctor's certificate.

24. While examined as WW1 the workman has denied all the allegations levelled against him. He has stated that on the date of the incident he obtained the boarding pass and ticket. Subsequently Shri. Sudheep Narayanan got back the boarding pass and ticket from him and directed to get himself examined by a doctor and obtain a certificate and only after that he will be allowed to travel in the flight. He has stated that he has not met the duty doctor at the airport. He has further stated that he went to Kullickal Hospital and consulted with a doctor.

25. The important aspect to be considered is whether on the date of the incident i.e., on 15.05.2001 at about 02:30 pm the workman was under the influence of alcohol and he has done any act subversive of discipline. The management is relying on the evidence tendered by MW2. Even though the workman has denied the allegations levelled against him and stated that MW2 and Captain Ramakrishnan foisted false against him, on an evaluation of the evidence tendered by MW2 on the one hand and WW1 on the other and the documents marked as Exts.M1(a) and M1(b) it is evident that on the date of the incident the workman had consumed liquor and failed to obey the lawful orders of his superiors. The question as to whether at the time of incident the workman was under the influence of alcohol or not is a matter to be inferred from the facts and circumstances of the case. It is true that there is no medical evidence to support the case put forward by the management. The evidence tendered by MW2 probabilises the fact that at the time of the alleged incident workman had consumed liquor. In such circumstance it is the duty of the workman to prove that he was not under the influence of alcohol and fit to travel to Mumbai in Flight No.9W 424. The conduct and behaviour of the workman at the time of the incident at the Calicut Airport probabilises the fact that he had consumed the liquor and that he disobeyed the lawful orders of his superiors. In such circumstances inference is that the workman has done acts amounting to willful insubordination and disobedience to the lawful orders of his superiors and that he behaved in disorderly manner subversive of discipline.

26. Even though the management has alleged that the workman behaved in a riotous manner, there is no acceptable evidence to prove the same. It is evident that he behaved in a disorderly manner subversive of discipline and that there was willful disobedience on his part in obeying the lawful and reasonable orders of his superiors. Therefore the points for consideration are answered as follows:

"That the workman behaved in a disorderly manner during working hours at the management establishment, which is subversive of discipline and that he has done act amounting to willful insubordination or disobedience to the lawful and reasonable orders of his superiors. It is also held that the management failed to prove that the workman behaved in riotous manner during working hours at the management establishment".

27. Point No.(iii):- The management imposed the punishment of dismissal from service on the workman Shri K. N. Suresh Kumar, Security Assistant. At the preliminary stage it was found that the management failed to provide copy of the memorandum of allegations to the workman preceding the issuance of the charge sheet. So also it is seen that in the charge sheet the management has alleged gross misbehavior against the workman and in the same charge sheet they appointed an enquiry officer. They also fixed the date, time and place of enquiry and intimated the same to the workman. The hasty decision on the part of the officials of the management reveal that they pre-decided the issue and

proceeded against the workman in order to complete the formalities. In such circumstance and in view of finding on Point Nos.(i) and (ii) it will not be reasonable to arrive at a conclusion that the punishment of dismissal from service imposed on the workman by the management is just and proper. It is true that the workman has committed acts amounting to willful insubordination or disobedience to the lawful and reasonable orders of his superiors and he behaved in a disorderly manner during working hours at the management establishment. His action requires punishment.

28. The management has produced document to prove that on an earlier occasion the workman was proceeded against and punishment was imposed on him for disorderly behaviour. Ext.M1don't is the copy of the order produced by the management to prove that on an earlier occasion the workman was subjected to disciplinary proceedings and punishment was imposed on him. From the documents produced by the management it is evident that the workman has committed acts amounting to willful insubordination and disobedience to the lawful and reasonable orders of the superiors and that he behaved in a disorderly manner while in service under the management. In such circumstance an order directing to reinstate him in service will definitely cause undue hardship to the management. As already stated the punishment of dismissal from service imposed by the management in this matter is harsh and disproportionate. Considering the facts and circumstance of the case and the documents produced on either side it is held that the ends of justice will be met by modifying the punishment of 'dismissal from service' into 'discharge with superannuation benefits'. The point is answered accordingly.

29. Point No.(iv):- In view of the finding on Point Nos.(i) to (iii) an award is passed holding that the punishment of "dismissal from service" imposed by the management on the workman is disproportionate and hence it is set aside. The workman Shri K. N. Suresh Kumar, shall be, "discharged from service with superannuation benefits". The point is answered accordingly.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 31st day of May, 2016.

SASIDHARAN K., Presiding Officer

APPENDIX

Witnesses for the workman

| | | |
|-----|------------|--------------------------|
| WW1 | 12.08.2014 | Shri. K. N. Suresh Kumar |
| WW2 | 10.02.2015 | Shri. Nikhilesh C. P. |

Witnesses for the managements

| | | |
|-----|------------|-------------------------------|
| MW1 | 29.04.2015 | Shri. Surendra Kripal |
| MW2 | 20.08.2013 | Shri. A. Thomas Mathew |
| MW3 | 06.11.2013 | Shri. K. P. Suresan |
| MW4 | 22.01.2014 | Shri. Stephen Cyprian D Mello |
| MW5 | 10.03.2014 | Shri. Anand Narayanan Pillai |

Exhibits for the workman

| | | |
|----|---|--|
| W1 | - | Explanation letter dated 02.08.2001 to the charge sheet dated 23.07.2001 submitted by the workman to Col. A. S. Bedi, G. M. Security |
| W2 | - | True copy of the Certificate dated 08.09.2001 issued by Dr. Biju Ashokan, General Physician/Medical Officer, Indian Airlines Ltd., Calicut Airport. |
| W3 | - | True copy of the representation dated 03.09.2000 by all the security staff, Jet Airways, Calicut to Shri. D. S. Chauhan, Sr. Manager Security, Bombay. |
| W4 | - | True copy of the representation dated 11.09.2001 submitted by the workman to Col. A. S. Bedi, GM Security (Operations), Jet Airways (I) Pvt. Ltd., Mumbai. |

Exhibits for the managements

| | | |
|-------|---|--|
| M1 | - | Documents filed by M/s.Jet Airways(India) Pvt. Ltd., Mumbai |
| M1(a) | - | Inter Office Memo dated 15.05.2001 by Shri. A. Thomas Mathew, Airport Manager, Calicut to Shri. C. Soon, GM – Airport Services |

| | | |
|-------|---|---|
| M1(b) | - | Copy of Inter Office Memo dated 02.07.2001 by Capt. C. Rama Krishnan, Security Officer, Jet Airways, CCJ to the Area Manager Security-South |
| M1(c) | - | Copy of Charge Sheet dated 23.07.2001 issued by Col. A. S. Bedi, G. M. – Security, Jet Airways (India) Pvt. Ltd., Mumbai to the workman |
| M1(d) | - | Copy of The Kerala Industrial Employment (Standing Orders) Rules, 1958 |
| M1(e) | - | Explanation letter dated 02.08.2001 to the charge sheet dated 23.07.2001 submitted by the workman to Col. A. S. Bedi, G. M. Security |
| M1(f) | - | Copy of the dismissal letter dated 19.10.2001 issued by Co. A. S. Bedi, General Manager – Security, Jet Airways(India) Pvt. Ltd., Mumbai to the workman |
| M1(g) | - | Inter Office Memo dated 15.05.2001 issued by Capt. C. Ramakrishnan, Security Officer, Jet Airways to the Area Manager Security South, MAA. |
| M1(h) | - | Copy of the medical certificate dated 15.05.2001 issued by Dr.Aboobakker, Pulikkal Hospital, Pulikkal, Malappuram Distt. |
| M2 | - | Attested copy of Circular 17/1998 dated 07.08.1998 issued by the Officer on Special Duty(INT) |
| M3 | - | Attested copy of Circular 18/2000 dated 08.06.2000 issued by the Officer on Special Duty(I) for Commissioner of Security(CA) |
| M4 | - | Attested copy of Circular No.12/2002 dated 01.05.2002 issued by the Additional Commissioner of Security(CA), Bureau of Civil Aviation Security,(Ministry of Civil Aviation), Government of India, A Wing, Janpath Bhawan, New Delhi |
| M5 | - | Attested copy of letter No.SEC/GDA/JA/Disp/02 dated 22.01.1995 to Major B Sharma, GM Security, Jet Airways, Bombay by Capt. Rajinder Singh, Security Officer, Jet Airways, Goa. |
| M6 | - | Attested copy of letter dated 23.01.1995 to Capt. Rajinder Singh, Security Officer, Goa by the workman |
| M7 | - | Attested copy of letter dated 17.05.1995 by Shri. Francis D'Souza, Sales Manager, Goa to the workman |
| M8 | - | Attested copy of letter dated 17.05.1995 to the Station Manager, Jet Airways, Goa by the workman |
| M9 | - | Attested copy of letter dated 16.06.1995 to the Sales Manager, Jet Airways, Goa by the Workman |
| M10 | - | Attested copy of letter dated 22.06.1995 by Shri. Jayaram Shetty, Vice President, H.R & Services, Jet Airways(India) Pvt. Ltd., Bombay to the workman |
| M11 | - | True copy of the Personnel Policies & Procedures(PPP) Manual – Chapter 6 – Reimbursement – Section 1 |
| M12 | - | True copy of Do's and Dont's – Decorum and Conduct |
| M13 | - | True copy of the Personnel Policies & Procedures(PPP) Manual – Chapter 5 – Benefits – Section 1. |

नई दिल्ली, 24 जून, 2016

का.आ. 1327.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. डब्ल्यू.एफ.एस. (ईडिया) प्राइवेट लिमिटेड के प्रबंधत्रंत्र के संबद्ध नियोजकां और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-11012/3/2013-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th June, 2016

S.O. 1327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, New Delhi (Ref. No. 34 of 2013) as shown in Annexure, in the industrial dispute between the employers in relation to the management of

M/s. Bird Worldwide Flight Services (India) Pvt. Ltd. and their workmen, which was received by the Central Government on 24.06.2016.

[No. L-11012/3/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID. No. 34/2013

Sh. Sumit Ujjainwal,
S/o Sh. Subhash,
R/O F-213, Laxmi Park, Nangloi,
New Delhi -110041 ...Workman

Versus

The Manager,
M/s Bird Worldwide Flights Services (India) Pvt. Ltd. ,
E-9, Connaught House, Connaught Circus,
New Delhi-110001 ...Management.

AWARD

The Central Government in the Ministry of Labour vide Letter No.L-11012/3/2013 (IR(CM-I)) dated 9.4.2013 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Bird World Wide Flights Services (India) Pvt. Ltd. in terminating the employment of Sh. Sumit Ujjainwal Irfan S/o Sh. Subhash w.e.f. 1.1.2012 is legal and justified? To what relief is the workman entitled to?”

On 23.04.2013 reference was received in this Tribunal. Which was register as ID No. 34/2013 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 3.07.2013. Through which he prayed as follows:-

“Hon’ble Court may very kindly be pleaded to pass an award holding that the termination of service of the workman by way of refusal of duty, as stated above, and without any notice, notice pay, charge sheet, inquiry compensation and other legal dues is illegal, unjustified and an act of unfair labour practice and in gross violation of section 25-G and 25-F of the ID. Act, 1947 and the workman is entitled to reinstatement in service with continuity of service and fullback wages along with all consequential benefits. It is further prayed that an order for Rs. 20,000/- may also very kindly be passed as cost incurred in the under section 11(7) of the ID. Act in the interest of justice.”

Against claim statement management filed written statement on 6.08.2013. Through which it prayed as follows:-

“ It is respectfully prayed that the present statement of claim filed by the workman is absolutely false and misconceived. The workman is not entitled to any relief whatsoever and the statement of claim filed by him is liable to be rejected outrightly with a No Dispute Award.

Such other/further order(s) which this Hon’ble Court may deem fit and proper be also passed in favour of the management-respondent no. 2 and against the workman /claimant.”

Against which workman filed rejoinder on 8.5.2014. Where-in he reaffirmed the contents of claim statement.

“On 28.8.2014 I framed following issues:-

1. Whether the action of the management of Bird World Wide Flights Service (India) Pvt. Ltd. in terminating the employment of Sh. Sumit UjjainwallIrfan S/o Sh. Subhash w.e.f 01.01.2012 is legal and justified? If so its effects?
2. To what relief the workman is entitled to and from which date?

In the instant case after several opportunities workman adduced his no evidence. So right of adduce his evidence has been closed and case proceeded ex-parte against workman. Management adduces its evidence to prove its stand taken in written statement.

Management No.2 filed its written statement. I perused the pleadings and evidence on record. Which shows that evidence of management is unrebutted hence reliable and credible.

In these circumstances reference is liable to be decided against workman and in favour of management.

Which is accordingly decided. Claim statement is dismissed.

No Dispute Award is accordingly passed.

Dated:-15.06.2016

HARBANSHP KUMAR SAXENA, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1328.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 34/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-20012/27/2010-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th June, 2016

S.O. 1328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 34 of 2011) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 24.06.2016.

[No. L-20012/27/2010-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D.ACT, 1947

Ref. No. 34/2011

Employers in relation to the management of Piprwar Project M/s. CCL

And

their workman

Present:- Sri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri U.N. Lall, Advocate

State : Jharkhand

Industry : Coal

Dated 16/05/2016

AWARD

By Order No.L-20012/27/2010-IR (CM-1), dated 24/05/2011, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub -section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Piprwar Project under piprwar Area of M/S Central Coal Field Limited in denying promotion to Mr. R.K.Rout E.P.Welder to the post of foreman (Misc) T&S Grade B with retrospective effect and payment of wages and consequential benefit is legal and justified? To what relief the workman concerned entitled to?”

2. The case is received from the Ministry of Labour on 04.07.2011. After receipt of the reference, both parties are noticed. The workman files their written statement on 26.08.2011. Thereafter the management files their written statement-cum-rejoinder on 05.10.2012. One witness each side examined on their behalf respectively. And document of workman is marked as W-1 to W-6.

3. The case of the workman is that Sri R.K.Rout was not promoted whereas Sri D.K.Rai was promoted to the post of E.P.Welder on 08.08.1995 vide letter No. 472 dt. 14.08.1995.

4. It is also submitted by the workman that Sri D.K.Rai had come on request transfer, therefore as per such policy decision of the management he is to be kept on bottom of the seniority list of the said unit. Therefore Sri Ram Kumar Rout is to be senior. But Sri Rout was allowed seniority in Gr. B vide notification order No. 1127 dt. 21.08. 1996 treating the promotion.

5. Sri D.K.Rai was promoted to the post of Foreman (Misc) in T & S Gr. B w.e.f March 2007 for which there was representation by Sri R.K.Rout, EP Welder Gr. B to give him promotion. But his representation was not considered. This created anomaly in the matter of promotion of Sri R.K.Rout and it other wise mean that his case has been ignored or left out knowingly by hiding the facts of transfer on request of Sri D.K.Rai. Hence dispute arose.

6. On the other hand the case of the management is that according to the prescribed norms only one post of foreman (Aux) for each excavation workshop has been approved by the management and only excavation workshop at piprwar Area.

7. It further submitted by the management as per cadre scheme for promotion of foreman (Aux) Gr. B from E.P. welder E.P. turner Grade I/ B would be eligible for consideration subject to they put in 6 years in the post. They should at least have studied up to 9th class and be capable of writing English and reading report in English and capable for preparing indents etc preference, other things, being able equal would be given to matriculates and those who have passed ITI trade certificate examination in welding, turning molding of machining.

8. It is also submitted that the condition to be followed according to the norms that the number of post of foreman (Aux) would be one for each excavation workshop in collieries having excavation section. And according to the man power budget, the workman concerned was considered in DPC along with others.

9. That to the provision of one foreman (Aux) in one workshop two post where recommended to be filled up at the first stage taking in to consideration of number of excavation workshop existed so as to shoulder the responsibility of supervision of turning and welding section by promoting Sri N.K.Mandal, turner and D.K.Rai welder who have empanelled at serial No.1 respectively. As such the sponsoring union raised the present Industrial Dispute and claim that R.K.Rout is senior to D.K.Rai which is not fact. The fact that D.K.Rai is senior to R.K.Rout in all respect.

10. The short point to be decided in this reference is, whether the workman is to be promoted and regularized first than of his co-worker D.K. Rai. Both side adduce evidence. The cross- examination of the workman is produced below:-

In Grade III/D, I came in the year 01.02.1988 In the said post. D.K.Ray was on 07.08.1983. D.K.Ray went to Grade II/C on 26.08.1988, whereas I went to said post on promotion on 22.08. 1991.

XXXXX

11. The workman claims seniority over Sri D.K.Ray. But his evidence, shows that he is junior to Sri D.K.Ray in each grade. Moreover it is the plea of the workman that when one come on request transfer, his order of seniority as per policy decision of the management was to be kept on bottom of the seniority list of the said unit but the policy or any circular has not been filed by the workman.

12. Considering the facts and circumstances of this case, I hold that the action of the management of Piprwar Project of M/S Central Coal Field Limited in denying promotion to Mr. R.K.Rout E.P.Welder to the post of foreman (Misc) T&S Grade B with retrospective effect and payment of wages and consequential benefit is fair & justified. The management took right decision in the matter of promotion. Hence he is not entitled to get any relief.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1329.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी. डब्ल्यू.एफ.एस. (ईडिया) प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 35/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-11012/4/2013-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th June, 2016

S.O. 1329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, New Delhi (Ref. No. 35 of 2013) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bird Worldwide Flight Services (India) Pvt. Ltd. and their workmen, which was received by the Central Government on 24.06.2016.

[No. L-11012/4/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID. No. 35/2013

Mohd. Irfan S/o Shamim Ahmad,
R/o B-646, Aman Vihar,
Kirari Suleman Nagar,
New Delhi -110086

...Workman

Versus

The Manager,
M/s. Bird Worldwide Flights Services (India) Pvt. Ltd. ,
E-9, Connaught House, Connaught Circus,
New Delhi-110001

...Management

AWARD

The Central Government in the Ministry of Labour vide Letter No.L-11012/4/2013 IR(CM-I) dated 9.4.2013 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Bird World Wide Flights Services (India) Pvt. Ltd. in terminating the employment of Mohd. Irfan S/o Shamim Ahmad, w.e.f. 1.1.2012 is legal and justified? To what relief is the workman entitled to?”

On 23.04.2013 reference was received in this Tribunal. Which was register as I.D No. 35/2013 and claimant was called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 3.07.2013. Through which he prayed as follows:-

“Hon’ble Court may very kindly be pleaded to pass an award holding that the termination of service of the workman by way of refusal of duty, as stated above, and without any notice, notice pay, charge sheet, inquiry compensation and other legal dues is illegal, unjustified and an act of unfair labour practice and in gross violation of section 25-G and 25-F of the ID. Act, 1947 and the workman is entitled to reinstatement in service with continuity of service and fullback wages along with all consequential benefits. It is further prayed that an order for Rs. 20,000/- may also very kindly be passed as cost incurred in the under section 11(7) of the ID. Act in the interest of justice.”

Against claim statement management filed written statement on 6.08.2013. Through which it prayed as follows:-

“ It is respectfully prayed that the present statement of claim filed by the workman is unsustainable in law and the workman is not entitled to any benefit least the re-instatement in service with continuity of service and full back wages alongwith all consequential benefits, after expiry of his contractual period. The workman is gainfully employed and, therefore, no relief can be granted to the workman and the statement of claim filed by him is liable to be rejected outrightly with ‘No Dispute Award.

Such other/further order(s) which this Hon’ble Court may deem fit and proper be also passed in favour of the management-respondent no. 2 and against the workman /claimant.”

Against which workman filed rejoinder on 8.5.2014. Where-in he reaffirmed the contents of claim statement.

“On 28.8.2014 I framed following issues:-

1. Whether the action of the management of Bird World Wide Flights Service (India) Pvt. Ltd. in terminating the employment of Mohd. Irfan S/o Shamim Ahmad, w.e.f 01.01.2012 is legal and justified? If so its effects?
2. To what relief the workman is entitled to and from which date?

In the instant case after several opportunities workman adduced his no evidence. So right of adduce his evidence has been closed and case proceeded ex-parte against workman. Management adduces its evidence to prove its stand taken in written statement.

Management No.2 filed its written statement. I perused the pleadings and evidence on record. Which shows that evidence of management is unrebutted hence reliable and credible.

In these circumstances reference is liable to be decided against workman and in favour of management.

Which is accordingly decided. Claim statement is dismissed.

No Dispute Award is accordingly passed.

Dated:-15.06.2016

HARBANSK KUMAR SAXENA, Presiding Officer

नई दिल्ली, 24 जून, 2016

का.आ. 1330.——औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 55/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.06.2016 को प्राप्त हुआ था।

[सं. एल-20012/267/1994-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th June, 2016

S.O. 1330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 55 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 24.06.2016.

[No. L-20012/267/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947

Ref. No. 55 of 1995

Employers in relation to the management of Sudamdhil Shaft Mine of M/s. BCCL

And

Their workman

Present:- Sri Ranjan Kumar Saran, Presiding officer**Appearances:**

For the Employers : Shri D.K. Verma, Advocate
 For the workman : Shri D. Mukherjee, Rep.
 State : Jharkhand

Industry : Coal

Dated 13/05/2016

AWARD

By Order No.L-20012/267/1994 -IR -(C-I), dated 12/06/1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub -section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of management of Sudamdih Shaft Mine of M/s. BCCL in terminating the service of Shri Umesh Mahto is justified? If not, to what relief the concerned workman is entitled ?”

2. This Case is received from the Ministry of Labour on 19.06.1995. After receipt of reference, both parties are noticed. The Sponsoring Union files their written statement on 21.09.1995. The management files their written statement on 15.07.1996. No evidence from both side adduced. But documents on behalf of the workman is marked as W-1 to W-7 and management's document marked as M-1 to M-11.

3. The case of the workman is that the concerned workman had been working as permanent PRM under direct control and supervision of the management. But all of sudden the General Manager issued letter and terminated the service of the concerned workman and cancelled the appointment letter without affording him any opportunity in violation of natural justice.

4. It is also submitted by the workman that the General Manager had no authority under the provision of Certified Standing Order to cancel any appointment letter. Hence Industrial dispute arose.

5. On the other hand the case of the management is that the management acquired surface right through case No. 53/84 by order dated 20.03.1987 over the land situated at mouza Mohalbani, Khatian No. 1 Plot No. 797 covering an area of 1.40 acres and plot No. 798 covering an area of .18 acres, totaling to 1.58 acres from the ownership of late Badi Mahto. Badi Mahto has two sons One shri Baneshwar Mahto and another Shri Anil Mahto. His wife was named Smt. Kurti Mahtain. After the death of Badi Mahto, Smt. Kurti Mahtain and Shri Anil Mahto and Baneshwar Mahto became co-sharers, each of them having 1/3rd share over that property.

6. It is further submitted by the management that the District Authorities paid the compensation amount in L.A case No. 53/84 of Rs. 21,168.52 to shri Anil Mahto and the equal amount was paid to shri Baneshwar Mahto and Kurti Mahtain.

7. The management besides paying the value of the land for acquiring the same for mining purpose offered and employment to one of the descendants of Badi Mahto and in that connection the concerned workman Shri Umesh Mahto approached the management for providing employment to him against acquisition of the aforesaid land and he submitted an affidavit stating that his father is the absolute owner of the land over plot No. 797 and 798 covering an area of 1.58 acres recorded in Khatian No.1 at Mahalbani Mauza

8. It is also submitted by the management that the dealing officer without making proper enquiry relating to other co-sharers and without obtaining their consent recommended the employment of the concerned workman Sri Umesh Mahto and accordingly the concerned workman was appointed as Miner Loader on probation of one year. It is also stipulated in the appointment letter that during the period of his service on probation his service would be terminated without assigning any reason in case of any discrepancies that may be occur in the matter of the particulars submitted by him.

9. It is further submitted by the management that Shri Anil Mahto another son of late Badi Mahto filed an affidavit claiming that he is the rightful claimant for employment being the son of late Badi Mahto. Smt. Kurti Mahtain widow of late Badi mahto also submitted an affidavit claiming that her son Sri Anil Mahto should be given employment in lieu of the land instead of the concerned workman who was her grand son through Baneshwar Mahto.

10. It is also submitted by the management that after receiving two affidavits the management reviewed the matter and decided to offer employment to Sri Anil Mahato as he was supported by her mother and the total share held by both

son and mother became 2/3rd of the property . Shr Baneshwar Mahato was the owner of 1/3rd of the property and he wanted his son to be appointed. Hence final decision was taken as per the usual norms to solve such problem and shri Anil Mahto was provided employment and the concerned workman shri Umesh Mahto was discontinued from his employment by letter dated 19.11.1991.

11. It is further submitted that the concerned workman was probationer and his appointment was conditional . He had not completed even six months period of service and he had not been confirmed as because the probationary period was not over by that time.

12. Keeping in view of all aspects, short point to be decided in the case whether the termination of the workman concerned is to be revoked or not.

13. The case of the workman is that, he was given job as their land was taken in L.A case by BCCL . The condition was, if there will be any discrepancy his job will be lost, just after appointment of Umesh Mahto, the land owner Bado Mahto's son Anil Mahto challenged the appointment of Umesh and claimed to be appointed for himself.

14. The management after verification found Badi Mahto's son Anil Mahto is the genuine claimant of job and gave him job and as per condition, removed Umesh Mahto from job. This being the situation, the management has not committed any illegality, moreover wife of Badi Mahto gave his share and affidavit for employment of Anil Mahto. Now the 2/3rd share in favour of Anil Mahto and he is the son of Badi Mahto, instead of Umesh Mahto is grand son of Badi Mahto. As such the management is rightly gave the job to the land owner's son Sri Anil Mahto.

15. Considering the facts and circumstances of this case, I hold that the action of management of Sudamdhil Shaft Mine of M/s. BCCL in terminating the service of Shri Umesh Mahto is justified and legal, Hence Umesh Mahto is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 03/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12025/01/2016-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.06.2016.

[No. L-12025/01/2016-IR (B-1)]

RANBIR SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

ID No. 03/2015

BETWEEN :

Sri Neel Kamal Kumar Singh
C/o Sri Parvez Alam
283/63 Garhi Kanura, Premwati Nagar
PO Manak Nagar, Lucknow

AND

1. The Sri AP Srivastava, Enquiry Officer
Asstt. General Manager
State Bank of India, RACP, 1st Floor Local HO
Motimahal Marg, Lucknow-226001
2. Regional Manager,
Regional Business Office, Administrative Office-1
24 MG Marg, Lucknow-226001
3. Dy.General Manager(B&O)
State Bank of India, Administrative Office, V floor
24 M.G Marg, Lucknow-226001
4. Sri A.S.Pal, Complainant,
Regional Manager, Regional Business Office
AO-V, 24, MG, Marg, Lucknow-226001

AWARD

1. Sri Neel Kamal Kumar Singh filed the above I.D. under section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) between petitioner and the Asstt. General Manager/Regional Manager/Dy. General Manager/Regional Manager, State Bank of India, Lucknow for adjudication.

2. The workman Sri Neel Kamal Kumar Singh workman, as per his claim statement W-01 dated 23.02.2015, has stated in brief that he was appointed on 24.01.1985 under the subordination of opposite party management, since then he had worked with full deviation and sincerity, he never misbehaved with any colleague and superior authority, neither he had shown any courtesy. He was working as Special Assistant in the Govt. Business Branch, Lucknow, on 22.10.2013 at about 3.30 PM he entered the room of opposite party no.4, Sri S.S.Pal, Regional Manager in connection with some departmental work, Sri S.P.Pandey, Chief Manager, Sri Jang Bahadur, Manager and Smt. Zeenat Khan, Asstt. were also present there, but the Regional Manager opposite party no.4 annoyed and threatened to ruin his life in case he argues, he also pushed him out of the room and asked the guard to detain him while he would lodge a FIR against the applicant and would dismiss him as well. The workman has further stated that any how he managed to return to his seat and finished his work, but on that day itself he was suspended without any ground and a charge sheet was also issued on 20.11.2013 on false and fabricated ground and documents, against the Memorandum of Settlement dated 10.04.2002.

3. The workman has further stated that he submitted reply for the charge sheet dated 20.11.2013, departmental enquiry was initiated, Sri AP Srivastava opposite party no.1 was appointed as enquiry officer, during the departmental enquiry prosecution evidence was adduced which reflected innocence of the applicant, the enquiry officer coerced the witness Mr. Jang Bahadur to change his version and when he did not succumb to the pressure, he was declared a hostile witness, an explanation was also called from him. The applicant has asserted that he had requested for change of the enquiry officer but his request was not accepted, in a victimized and ex-parte manner the enquiry officer concluded the proceedings, unduly held the charges as proved, did not take cognizance of the defence brief, neither any opportunity was provided to adduce defence evidence, Memorandum of Settlement dated 10.04.2002 was not followed and principle of natural justice was violated, the disciplinary authority vide his letter dated 29.04.2014 sought applicant's explanation within 7 days, which he submitted but without considering it, he was dismissed from services ex-parte, an appeal was preferred by him but that was also rejected. The applicant has submitted that conduct of enquiry officer as well as disciplinary authority was biased and perverse, they were adamant to punish the workman, during suspension period no subsistence allowance was paid to him.

4. The workman has further stated that he lodged a FIR against the opposite party no.4, and the case is pending before CJM, Lucknow, under such circumstances no action should have been taken by the management against him so long as case is pending. The applicant has moved application before RLC (C) Lucknow but no conciliation could be arrived and thereafter the petition has been filed before this court. With the above pleadings the workman has prayed to set aside the punishment order dated 23.05.2014 and Appellate Authority's order dated 21.08.2014, with the request to reinstate him with full salary and consequential benefits etc. The copy of RLC's letter and the relevant order-sheet has been enclosed with the claim statement.

5. The management has filed written statement M-4 with strong denial of the allegations levelled in the claim statement. Posting of the workman as Special Asstt., has been admitted, but the management has asserted that he was subsequently attached to RBO-V, Lucknow from 27.08.2013 to 22.10.2013. During his attachment to RBO-V, Lucknow on 22.10.2013 he misbehaved and physically assaulted Mr. A.S.Paul, the Regional Manager, RBO-V in his Chamber. For these acts of misbehavior a show cause notice was issued to the workman on 7.11.2013 to which he submitted his reply dated 14.11.2013. The disciplinary authority having found his reply insufficient had directed initiation of disciplinary proceedings against the workman and a charge sheet dated 20.11.2013 was issued and same was served

upon him on 22.11.2013. The applicant had filed his reply to the charge sheet on 28.11.2013. The disciplinary authority appointed Sri AP Srivastava as the Inquiry Officer who held preliminary enquiry on 14.12.2013 and thereafter regular enquiry was held, on various dates from 17.12.2013 till 26.03.2014. Sri NeelKamal Kumar Singh, the workman had participated in the hearing alongwith his defence representative and has been provided with full opportunity to defend himself. On 28.04.2014, the enquiry officer has submitted his enquiry report and thereafter, the copy of the enquiry report was provided to the applicant. On 29.04.2014, a tentative order was passed by the disciplinary authority calling upon the workman to show cause why the penalty of dismissal from service be not imposed upon him for the reasons contained in the said tentative order and same was served to the applicant. On 21.05.2014 the applicant gave his written submissions to the said tentative order. Upon considering the written submissions of the workman, enquiry report and all other documents and evidences the disciplinary authority decided to impose the punishment of dismissal from service upon the above named workman and accordingly a final order was passed on 23.05.2014. Feeling aggrieved by the order of the disciplinary authority, the applicant had preferred a departmental appeal, which was also dismissed on 21.08.2014.

6. The opposite party has further stated that the charges against the workman were found established since his conduct is grossest indiscipline therefore maximum punishment of dismissal has been imposed. It has also been stated in the written statement that the witness examined during the departmental enquiry proved prosecution case, no undue pressure was exercised on any witness. The enquiry officer had considered the evidence of prosecution as well as defence version, and had carefully examined the whole matter, principle of natural justice was not violated. The management has requested to reject the claim statement filed by the workman.

7. As per list M-9 several documents including disciplinary proceedings etc. have been filed by the management.

8. Rejoinder W-11 has been filed by the workman while reiterating the pleas taken in the claim statement and allegations mentioned in the written statement have been denied.

9. Preliminary objections M-12 have also been filed by the management.

10. During the Court proceedings, the workman moved an application W-17 dated 18.03.2016, wherein he has prayed that if his punishment is reduced to the level of "Removal" from "Dismissal", he will not be having any objection. Copy of this application was provided to the management. The management did not file any objection in writing or orally, on W-17. Both the parties requested this court to expedite the case and hear the final arguments.

11. Arguments of Learned ARs of both the parties have been heard at length. Record has been perused thoroughly. During the final arguments and submissions on W-17, the workman alongwith his learned AR, and the bank officers viz. Sri Dharmendra Kumar, Chief Manager (HR), AO Lucknow, Mr. Yogesh Kumar, Chief Manager (Law) and Sri Abhilash Kant Srivastava, Asstt. Manager (Law) alongwith their learned AR were present before me.

12. It is an admitted fact to both the parties that the workman had joined the Bank services decades ago and at the time of alleged incident he was posted at the Government Business Branch, Lucknow as Special Assistant. Allegations and counter allegations have been made by both the parties on the issue of alleged misconduct. FIR and criminal proceedings have also perhaps been initiated. Photocopies of the documents in this regard have been filed by both the parties before this Tribunal. Here a natural inference may be drawn out that some improper conduct had occurred. After conducting domestic inquiry, the workman was found guilty and he was dismissed and his appeal was also rejected by the competent authority.

13. It is quite pertinent to mention here that the workman vide his application, W-17 prayed that in case his punishment is reduced to "removal" instead of "dismissal" then he would not have any objection. Another important feature in this regard is that the copy of W-17 was provided to the management. Senior officers were present in the Court; no objection in writing was filed before the Court on W-17 neither any oral objection was raised. It implies that the Bank does not want to assert anything on this issue if the punishment is reduced as per the request of the workman. Moreover, taking into account all the documentary evidence and pleadings of the parties available on record, it seems that the punishment awarded is a bit harsh, especially in the light of the fact that nothing adverse has been prudently brought to the notice of this Court regarding any previous misconduct or indiscipline of the workman.

14. After having heard the parties in the light of close scrutiny of the file, it is inferred that the punishment order dated 23.5.14 and appellate order dated 21.08.2014 passed by the officers of the management, are liable to be modified to the extent that it would have been just and proper for the management authorities to "remove" the workman from the services of the Bank instead of "dismissing" him. Accordingly, punishment is reduced and petitioner Mr. Neel Kamal Kumar Singh is entitled to all the consequential benefits as per Rules. The opposite party is directed to pay the benefits, including pecuniary benefits within four weeks of notification of award.

15. Award as above.

LUCKNOW.

12th April, 2016.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1332.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 69/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-41011/41/2012-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Northern Railway and their workmen, received by the Central Government on 20.06.2016.

[No. L-41011/41/2012-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

ID No. 69/2012

Ref.No. L-41011/41/2012-IR(B-I) dated 21.08.2012

BETWEEN :

The President
RMU, C/o Hemraj Sharma
H.No.570/66 Gopalpuri
Alambagh, Lucknow

AND

1. The Divisional Railway Manager,
Northern Railway,
DRM Office, Hazratganj
Lucknow
2. The General Manager
Northern Railway
Baroda House
New Delhi

AWARD

1. By Order No. L-41011/41/2012-IR(B-I) dated 21.08.2012 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between The President, RMU, C/o Sri Hemraj Sharma, Lucknow and the General Manager/Divisional Railway Manager, Northern Railway, Lucknow/New Delhi for adjudication.

2. The reference under adjudication is:

“WHETHER THE DEMAND OF THE UNION FOR APPOINTMENT OF SRI AMRITLAL S/O SRI CHANDRA PAL AND 25 OTHERS (LIST ENCLOSED) WHO HAVE WORKED AS SUB-STATION PORTERS, IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE UNION/WORKMEN ARE ENTITLED TO?”

3. Taking into account, the long absence of workman union in this case, an award dated 09.09.2013 was adjudicated by my learned predecessor/ the then hon’ble Judge, which was notified by the Govt. of India vide letter dated 11.11.2013.

4. The applicant/workmen moved an application for recall of the order dated 09.09.2013. On 19.05.2014, alongwith an affidavit, which was registered as Misc. Case No.06/2014, an application W-1 for recall of the said order, was in the interest of justice allowed by this Court, vide order dated 10.03.2015, on the payment of Rs.2000/- as cost. For further hearing of the case I.D.69/2012, 21.04.2015 was fixed, and both the parties were informed. Since 21.04.2015, more than 8 dates were fixed, but none appeared on behalf of the workmen, although learned AR for the opposite party/Northern Railway, Sri U.K.Bajpai, has been appearing in this court. Moreover, no claim statement was filed on behalf of the workmen.

5. This case has been lingering in the court for the last more than three years, yet the workman/union failed to file any claim statement. Learned AR for the management submits that the orders of this court are not being complied with by the union neither any claim statement has been filed, so the union should not be provided any relief in this regard. Cost imposed by this Court, has also not perhaps been paid by the petitioner/union.

6. After having heard the prudent arguments advanced by the learned AR for the opposite party management, and perusal of the record, it is inferred that the conduct of the workman union is very much disappointing, it implies either the workman is satisfied with the functioning of the management referred in the Schedule, or the Union/workmen does not want to further proceed with the case. Accordingly, the union/workmen are not entitled to any relief.

7. Award accordingly.

LUCKNOW.

25.04.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1333.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 99/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/122/2004-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.06.2016.

[No. L-12012/122/2004-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/99/2004

Shri Gajraj Patel,
S/o Shri Jamuna Prasad Patel,
Near Railway Gate No.27,
Pared Kant,
Sagar (MP)

... Workman

Versus

Branch Manager,
State Bank of India,
Civil Lines Branch,
Sagar (MP)

... Management

AWARD

Passed on this 20th day of January, 2016

1. As per letter dated 14-9-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I. D. Act, 1947 as per Notification No.L-12012/122/2004-IR(B-I). The dispute under reference relates to:

“Whether the action of the Manager, State Bank of India, Civil Line Branch, Sagar MP in denying regularization to Shri Gajraj Patel, S/o Jamuna Prasad Patel working during the period 9-10-92 to 19-6-03 on daily wages messenger and terminating his services is proper and legal? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. As Ist party workman suffered mentally, his wife Kamla Bai is substituted as his next friend. The case of Ist party workman is that 2nd party appointed him as messenger on daily wages from 9-10-92. He completed more than 240 days continuous service. He acquired status of permanent employee under Section 25 B of ID Act. as per bipartite settlement between management and staff federation, he should have been given benefit of regular appointment. That he was performing work of permanent employee. He was engaged on temporary basis amounts to unfair labour practice. That he is entitled for regular pay scale on par with regular employees on the principles of equal pay for equal work. Ist party further submits that he was continuously working till 19-6-03. His services were terminated without notice in violation of Section 25-F of ID Act amounts to illegal retrenchment. That he is unemployed after termination of his service and facing starvation. On such ground, workman is praying for reinstatement with consequential benefits.

3. 2nd party filed Written Statement at Page 7/1 to 7/8 opposing claim of workman. Case of 2nd party is that Ist party workman was engaged on daily wages as temporary messenger as per requirement. In 1992, he worked for 66 days, in 1993- for 249 days, in 1994- for 281 days, in 1995 for 233 days, in 1996 for 201 days & in 1997 for 163 days. The engagement of Ist party employee was purely contractual on daily wage basis. He was not employee of the Bank. Ist party workman worked for 163 days in 1997. He not completed 240 days continuous service in a calendar year preceding his termination. As workman was engaged on daily wages he was free not to come on duty on next day. Non-engagement of workman in 1997 could not be said retrenchment under Section 2(oo) of ID Act. Workman had not completed 240 days continuous service as per Section 25-B of ID Act. management submits that there are recruitment rules of selection of subordinate staff on regular basis. Selection Committee is constituted for selection of sub staff. Ist party workman was engaged on daily wages. He was not selected by such committee. As per provisions of Bipartite Agreement dated 17-11-87, 16-6-88, 28-8-88, 9-1-91, 30-7-96, 20-2-97, the employees working during period 1-7-75 to 31-7-88 are eligible for consideration of permanent employment. Ist party workman could not be considered as he was engaged on 9-10-92 after stipulated period. 2nd party further submits that as per judgment of Apex Court in case of State of Karnataka versus Umadevi, workman is not entitled for regularization. It is reiterated that workman has not completed 240 days continuous in calendar year preceding his non-engagement. Workman is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|---------------------|
| (i) Whether the action of the Manager, State Bank of India, Civil Line Branch, Sagar MP in denying regularization to Shri Gajraj Patel, S/o Jamuna Prasad Patel working during the period 9-10-92 to 19-6-03 on daily wages messenger and terminating his services is proper and legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?” | As per final order. |

REASONS

5. The terms of reference pertains to legality of denial of regularization to the Ist party workman and terminating his services. In Para 2 of the Written Statement filed by 2nd party, working days of workman are shown in 1992 for 66 days, in 1993 for 249 days, in 1994 for 281 days, in 1995 for 233 days, in 1996 for 201 days, in 1997 for 163 days. Workman was engaged on daily wages purely on contractual basis. Bipartite settlement Exhibit M-1, M-2 provides-

“Temporary employees in subordinate cadre will be given a chance for being considered for permanent appointment- (i) Category A those who have completed 240 days temporary service in 12 months or less after

1-7-75, (ii) Category(B) those who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75, (iii) Category (C) those who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1-7-75.”

As per the statement of claim filed by workman, he was engaged on 9-10-92. Workman is not covered for benefit of settlement Exhibit M-1, M-2. His claim for regularization giving benefit of settlement cannot be accepted.

6. W.r.t. legality of termination of services of Ist party workman in violation of Section 25-F of ID Act. Kamla Bai wife has filed affidavit of her evidence. The affidavit of evidence of Shri Santosh Yadav is also filed. Kamla Bai in her affidavit of evidence has stated that her husband was working from 9-10-92 till 19-6-03. His services were terminated without notice. Kamla Bai in her cross examination says her husband was going for duty at 8 AM and returning around 12.11 PM. After her marriage, her husband was in service. There was no reason for termination of her service.

7. Shri Santosh Yadav in his affidavit of evidence says that workman Shri Gajraj was working as messenger with him on daily wages from 9-10-92. In 1997, Shri Gajraj Patel and witness were working in the same branch. Services of witness Santosh Yadav was terminated in 1997. R/98/04 is pending about termination of his service. In his cross-examination, witness Santosh says he was appointed in June, 1990. Shri Gajraj was appointed after 2 years of his appointment. He claims ignorance how the workman was appointed. He reiterates that Ist party workman was working with him. Witness was unable to tell when workman Shri Gajraj was terminated.

8. Management's witness Shri Ashok Kumar filed affidavit of his evidence narrating working days in para 2 of his affidavit as pleaded in the Written Statement. In 1996, workman worked for 201 days, in 1997 for 163 days. In his cross-examination, management's witness says he had seen registers about working in the Bank till 1995. He doesnot know about the record after 1997-98. From his evidence in cross-examination documents, Exhibit W-1, W-2 are admitted in evidence. As per Exhibit W-1, Ist party workman Shri Gajraj was paid Rs.80 on 31-3-03. As per Exhibit W-2, Shri Gajraj was paid Rs. 240 on 19-6-03. The application for production of documents of Ist party was allowed. 2nd party was directed to produce documents. The documents produced by 2nd party Exhibit M-5 pertains to attendance for the year 1992 to 1995. Documents pertains to payment of Rs.301, 478/-, 483/-, 344/-, 516/-, 817/-, 516/- in 1997.

9. 2nd party has not produced documents about attendance or payment voucher to workman during 1997 to June, 2003. Documents Exhibit W-1, W-2 produced by workman are admitted by management's witness. Those documents shows workman was paid amount Rs. 80 & 240 in the year 2003. What happened to the documents of payment voucher and attendance of Ist party during 1997 to June, 2003 is not explained by the management's witness. Considering documents Exhibit W-1, W-2, it is clear that the evidence of wife of Ist party workman is corroborated that Shri Gajraj workman was working with 2nd party till 19-6-03. The argument advanced by learned counsel for 2nd party Shri Amit Nagpal that the workman was not working 12 months preceding termination of workman on 19-6-03 cannot be accepted. There is no evidence that Ist party workman was terminated following Section 25-F of ID Act, issuing notice or paying retrenchment or displaying seniority list on notice board. Therefore I hold that termination of Ist party workman is illegal for violation of Section 25-F of ID Act. The issue is answered in Negative.

10. Point No.2- In view of my finding in Point No. 1, services of Ist party workman are terminated in violation of Section 25-F of ID Act, during course of argument, it was pointed out that Ist party workman is not mentally well. His next friend is brought on record. Therefore relief of reinstatement would not be proper.

11. Copy of award in R/98/04 is produced in the matter of Shri Santosh Yadav. Considering Ist party workman was in employment of 2nd party from 1992 to June, 2003, compensation Rs. 1,50,000 would be reasonable. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) Termination of Ist party workman Shri Gajraj Patel is not legal and proper.
- (2) 2nd party is directed to pay compensation Rs. 1,50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1334.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 23/07) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/75/2006-आईआर (बी-I)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.06.2016.

[No. L-12012/75/2006-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/23/07

Shri Balram Sahu,
S/o Shri Tularam Sahu,
Chantideeh, Near Santhoshi Temple,
Bilaspur (CG) ... Workman

Versus

Asstt. General Manager,
State Bank of India,
Raipur (CG)

Branch Manager,
State Bank of India,
Bilaspur (CG) ... Management

AWARD

Passed on this 18th day of February, 2016

1. As per letter dated 25-1-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/75/2006-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of Indore, Bilaspur branch, Chhattisgarh State in terminating the services of Shri Balram Sahu, S/o Shri Tularam Sahu Ex-peon w.e.f. 12-12-05 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that he was engaged as permanent peon on daily wages Rs.45/- by Branch Manager from 1-12-96. He was working with devotion. Wages were increased to Rs.55, 60, 75, 85 & 100 per day. He was paid wages deducting wages for Sunday. He completed more than 240 days continuous service during the period 1-12-96 to 13-12-05. He was dismissed without notice. He was not paid retrenchment compensation he worked under different Branch Managers. He is covered as employee under Section 25 B of ID Act. Overlooking his excellent service record, his service were illegally terminated without notice. Workman alleged termination of his service in violation of Section 25-F, G of ID Act, policy of last come first go was not followed. That he was not re-employed. Thereby 2nd party violated Section 25 H of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 8/1 to 8/8 opposing claim of workman., 2nd party submits it is established under State Bank of Indore (subsidiary Banks) Regulation 1959. Banking business is carried in different

branches. 2nd party is governed by circulars issued by RBI & SBI. There are recruitment rules for sub staff. For recruitment, posts are advertised. The names are also called from Employment Exchange. After enquiry, suitable candidates are appointed. The sub staff is also transferred to other branches. Workman was not appointed following recruitment rules.

4. 2nd party submits that workman was engaged for cleaning, sweeping work for 1-2 hours in a day. Workman is not a casual employee. He was paid A Grade wages. Workman is not eligible for absorption in regular scales. 2nd party denied that workman had completed 240 days continuous service during any of the year. It is denied that his services are terminated without notice on 13-12-05. There was no question of his termination as he was never appointed. Name of workman was not on muster roll. 2nd party referred to ratio held in various cases and reiterates that engagement of workman as per exigencies for cleaning, sweeping work does not confer him status to employee. He is not entitled for regularization/ absorption.

5. Ist party workman filed rejoinder at Page 9/1 to 9/4 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|--|---------------------|
| (i) Whether the action of the management of State Bank of Indore, Bilaspur branch, Chhattisgarh State in terminating the services of Shri Balram Sahu, S/o Shri Tularam Sahu Ex-peon w.e.f. 12-12-05 is legal and justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. The term of reference pertains to legality of termination of Ist party workman. In support of his claim, workman filed affidavit of his evidence. In his affidavit of evidence, it is stated that he was engaged in the Bank from 1-12-96. He was working for 8 hours a day. He completed more than 240 days continuous service. He was paid Rs.40/- per day. Wages were increased to Rs.55, 60, 75, 85 & 100 per day. He worked under different Managers. Workman further stated that he was paid bonus during the period April, 97 to 12-12-95- total amount Rs.10,085/-. He had filed proceeding for gratuity of Rs.13,500/- before Competent Authority. The order was passed on 14-2-07. From his evidence, documents Exhibit W-3, W-4 were admitted. In his cross-examination, workman says he worked under Branch Manager Shri Kumar Satyendra, Shri A.M.Saxena, D.M.Udkute and G..P.Ninje. he was receiving wages weekly or fortnightly. Appointment letter was not issued to him. He was interviewed, written test was also taken after his re-examination, documents Exhibit W-5,W-6 are admitted in evidence.

8. Management's witness Shri Sachindre Kumar filed affidavit of his evidence. Management's witness says he has stated in his affidavit that no record is available in the branch about engagement of workman. It appears that workman was engaged for few days. He was paid daily wages. His engagement was temporary and contractual. Workman had never worked for 240 days in a calendar year. Workman was not engaged on permanent post. In his cross-examination, management's witness says he was not working at that time in Bilaspur branch of the Bank. Presently he is working at Telephone Exchange Road branch at Bilaspur. He filed affidavit of his evidence after going through the record filed before ALC. He had seen salary register. He claims ignorance whether bonus was paid to workman. He did not admit documents referred to him. That he not inquired from earlier Branch Manager before filing his evidence. Notice was not given to workman. He was not paid retrenchment compensation. He claims ignorance about the order passed for payment of gratuity. He was unable to tell for how many days workman worked in the Bank or appointment letters given to him. He claimed ignorance whether workman was sent on deputation to RBI. Presently cleaning work is carried through contractor.

9. Documents produced Exhibit W-1 shows bonus of Rs.10,685/- was paid to workman for the year 2001 to 2005. Exhibit W-3 is certificate issued by Branch Manager that workman was engaged on daily wages from 1-12-96 till the date certificate was issued on 31-3-01. Workman was found sincere. Exhibit W-4 is attested Identity card of workman. Exhibit W-5 is letter issued by Controlling Authority under payment of gratuity of Rs.13,500/-. Exhibit W-6 is order passed by Competent Authority allowing gratuity of Rs.13,500/-. Order finds clear reference that workman continuously rendered service during above said period. The documents discussed above corroborates evidence of workman that he was continuously working with 2nd party. Management's witness in his cross-examination admits that workman was not served with notice of termination, retrenchment compensation was not paid to him therefore the termination of workman is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in Point No.1 termination of workman is illegal for violation of Section 25-F of ID Act, question arises whether workman is entitled for reinstatement with backwages.

Shri Ram Nagwanshi submitted copy of award in R/180/00 reinstatement with 50 % backwages was allowed. The careful reading at Page 6 shows that workman pertaining to said reference was working from 77 to 99. The facts of present case are not comparable. The copy of award cannot be relied for persuasion purpose.

Copy of award in R/105/03 is submitted by Shri R.Nagwanshi. management was directed to provide employment as per settlement dated 24-12-90. Claim in the case is different.

Evidence on record shows that workman was engaged on daily wages, he was not appointed following the recruitment process. Workman was working with 2nd party from 1996 to 2001 for period of about 5 years. In my considered view, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of State Bank of Indore, Bilaspur branch, Chhattisgarh State in terminating the services of Shri Balram Sahu, S/o Shri Tularam Sahu Ex-peon w.e.f. 12-12-05 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1335.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार छतीसगढ़ ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 20/89) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/7/88-डी-आईबी/डी-3(ए)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/89) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Chhattisgarh Gramin Bank and their workmen, received by the Central Government on 20.06.2016.

[No. L-12012/7/88-D-IB/D-3(A)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/20/89

Shri M.K.Bhonsle,
Vill & Post Simga,
Bilaspur (CG)

...Workman

Versus

Chairman,
Chhattisgarh Gramin Bank,
Bilaspur

...Management

AWARD

Passed on this 27th day of January, 2016

1. As per letter dated 18-1-89 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/7/88-D-IB/D-3(A). The dispute under reference relates to:

“Whether the termination of services of Shri M.K.Bhonsle by the management of Bilaspur Raipur Kshetriya Gramin Bank, Bilaspur was justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the workman. statement of claim is submitted at Page 3/1 to 3/6 by 1st party workman. Case of 1st party workman is that he was employed in the Bank as cashier cum clerk from 18-8-90. Chargesheet was issued to him alleging misconduct of illegality of deposits by one borrower Lala. Workman submitted reply to the chargesheet denying charges against him. Without considering his reply, Enquiry Officer was appointed. No Presenting Officer was appointed. After submissions of the findings of Enquiry Officer, showcause notice was issued on 4-3-87. Workman submitted reply to the showcause notice. Without considering his contentions, the order of dismissal was issued on 15-5-87. The appeal preferred by workman was rejected on 29-7-87. Workman contends that Enquiry Officer conducted the enquiry without approval of the Competent Authority. Enquiry Officer permitted management to examine witness Shri D.G.Permanand Branch Manager. No opportunity was given to him to appoint Defence Assistant. He was not aware of the rules of the Enquiry proceedings. Despite witness Shri D.K.Soni was requested to examine in support of his defence. Enquiry Officer did not examine Shri D.K.Soni. Enquiry was not conducted properly as per rules. witness of the management was not cross examined. In 2nd sitting on 8-10-86, his statement was recorded by Presenting Officer. He was not witness in the enquiry about the incident. The incident alleged to have taken place on 27-4-83. Chargesheet was issued on 25-6-86 after delay of more than 3 years. It caused prejudice to the workman. he was not supplied statement of Heeramani Kashyap recorded on 16-8-85 alongwith chargesheet during the Enquiry Proceedings. It caused prejudice to cross examine the management's witnesses. Enquiry Officer allowed management to re-examine Heeramani Kashyap without justification. The complainant Dasaram and Lalaram were not examined in enquiry. Non-examination of those witnesses resulted denial of reasonable opportunity to cross-examine them. Workman was suspended contrary to Rule 30(4) of the Regulations. Enquiry Officer relied on extraneous material for recording his findings. Enquiry Officer conducted enquiry in biased manner. On all such ground, workman contends punishment for dismissal imposed against him is illegal. He prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 5/1 to 5/2 opposing claim of workman. 2nd party further contends that workman was appointed as clerk cum cashier in Lahir branch on 18-8-90. He continued in said branch till order of his suspension dated 13-11-84. The punishment of dismissal was imposed on 15-5-87. Duty of clerk cum cashier of the Bank includes receiving cash from customers and credit amount to their accounts. Workman while working on cash table on 27-4-87 was given withdrawal of Rs.4950/- by Shri Dasaram with the request to give Rs. 950 in cash and credit Rs.4000 in loan Account of his brother in law Lalha Kurmi. Workman taken credit entry of Rs.4000 in loan account pass book of Lalha Kurmi under his initials and returned pass book to Lalha Kurmi immediately. However he has not accounted such amounts to his loan account. The enquiry was conducted on various dates, 7 documents and witnesses were examined on behalf of the management. workman was allowed to cross examine the witness. He was also given opportunity to adduce evidence in defence. Workman had not produced any witness neither examined himself in support of his defence. Considering the findings of Enquiry Officer, charges against workman are proved. The punishment of dismissal was imposed against him. Appeal preferred by workman was rejected on 16-6-87. The punishment was upheld.

4. Workman filed rejoinder at Page 7/1 to 7/3 reiterating his contentions in statement of claim.
5. Management submitted reply to rejoinder at Page 6/1 to 6/8 reiterating contentions in Written Statement.
6. As per order dated 30-6-95, enquiry conducted against workman was found proper. Thereafter parties did not participate in reference proceeding.
7. Considering pleadings on record and order on issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|--|
| (i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings? | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

8. Point No.1,2- As per order dated 30-6-95, enquiry against workman is found proper and legal. Question remains whether charges alleged against workman are proved from evidence in Enquiry Proceedings? The record of enquiry is produced. Evidence of witness Heeraman Kashyap recorded in Enquiry Proceedings shows that on 27-4-83, he had come to the Bank alongwith Lalha Prasad and his brother-in-law Dasaram. Dasaram had withdrawn amount of Rs.4950/- He had requested to credit amount of Rs.4000 to loan account of Lalha Prasad and balance amount Rs. 950 was received in cash. Workman Bhonsle had taken entry of Rs.4000 in pass book. In his further evidence, management's witness says that on 10-8-85 Lalha Prasad had come to Bank. It was noticed that amount of Rs.4000 withdrawn by Dasaram and requested to deposit in loan account of Lalha Prasad, amount of Rs.4000 was not deposited in loan account. The detailed evidence is recorded about said incident in Enquiry Proceedings. The evidence of management's witness is not shattered. Witness was not cross-examined. Statement of workman recorded by Enquiry Officer does not show any explanation why amount of Rs.4000 was not submitted to the loan Account. The evidence of management's witness is sufficient to prove charges against workman. For above reasons, I record my finding in Point No.1 in Affirmative.

9. From my finding on Point No.1 charges against workman are proved pertains to receiving amount of Rs.4000 and not crediting said amount to loan account of Lalha Kurmi is a misconduct of serious nature. The punishment of dismissal imposed against workman cannot be said excessive. No interference is called in the order of dismissal of workman. For above reasons, I record my finding in Point No.2 in Affirmative.

10. In the result, award is passed as under:-

- (1) The termination of services of Shri M.K.Bhonsle by the management of Bilaspur Raipur Kshetriya Gramin Bank, Bilaspur is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 296/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-41012/129/99-आईआर (बी-I)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 296/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 20.06.2016.

[No. L-41012/129/99-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/296/99

Shri Kanchhedi Lal,
S/o Shri Sukhandi Lal,
Vill Ratanpura
PO Patori, Tehsil Sihora,
Distt. Jabalpur (MP)

... Workman

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur (MP)

... Management

AWARD

Passed on this 28th day of January 2016

1. As per letter dated 30-8-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-41012/129/99-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of the Divisional Railway Manager, Central Railway, Jabalpur in terminating the services of Shri Kanchhedral S/o Shri Sukhandilal, MRCL (Gangman) vide order No. E-22/DMO”E”/732 dated 4-12-93 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/3. Case of Ist party workman is that he was employed as MRCL Khalasi posted at PWI, W.C.Rly Jabalpur. Chargesheet was issued to him on 6-7-93 for his unauthorized absence during the period 15-6-93 to 6-7-93. Chargesheet is illegal being contrary to Railway Servant Discipline and Appeal rules 1968, Rule 11 and Rule 13. Again chargesheet was issued to him for absence from 6-1-93. Workman contends that said chargesheet was also illegal; issuing 2nd chargesheet is punishable as an offence. Chargesheet dated 29-10-93 issued to him pertain to his absence for the period 6-8-93 to 18-8-93. Several chargesheets were issued to workman pertaining to his unauthorized absence. The services were terminated vide letter dated 4-12-93. That he had produced medical certificates relating to the period of his absence. Those medical certificates were not accepted on record. That workman was suffering from TB. He could not attend duty. The order of his removal is arbitrary and deserves to be quashed. That enquiry conducted against workman in violation of natural justice, proper procedure was not followed. The enquiry was mockery. On such ground, workman prays for his reinstatement with consequential benefits.

3. Management was proceeded ex parte on 26-4-03. Workman failed to participate in reference and produced his evidence. My predecessor has passed no dispute award on 17-3-05. The award was challenged before Hon'ble High Court in Writ Petition No. 3355/07. Hon'ble Single Judge dismissed Writ Petition on 16-5-07. Workman filed writ appeal No. 1019/07 before Divisional Bench. The order passed by Single Bench and no dispute award passed by my predecessor were set aside and matter has been remanded back. The directions are issued while remanding the matter for proceeding with the matter and pass appropriate orders.

4. 2nd party filed Written Statement at page 15/1 to 15/6 opposing claim of Ist party workman. 2nd party contends that workman was employed as MRCL at Damoh. He was habitual absentee. Workman was irregular in his duties. He remained absent unauthorisely. Management did not take serious action against workman with a view to grant him opportunity to improve. The workman repeatedly remained unauthorisely absent. However no proceedings were initiated on the chargesheet issued to him. The chargesheet was issued to workman on 30-10-90 for unauthorized absence for period 5-7-90 to 20-10-90. DE was conducted against workman giving him full opportunity for his defence. Enquiry Officer submitted his report holding workman guilty of charges of unauthorised absence of above period. Workman was dismissed from service as per order dated 4-12-93.

5. 2nd party further submits that Railway employees are provided medical facilities free of cost. If employee fell sick, he has to report to Railway hospital for treatment. Similarly management should be intimated about the sickness. Workman had not reported sickness to Railway Hospital. Intimation was not given to the management. Workman was dismissed from service for the proved charges against him. If enquiry is found vitiated for any reasons, management is permitted to prove misconduct. It is further contented by 2nd party if workman is granted relief, it will send wrong message to other employees. That workman has failed to comply with order dated 8-10-07. The copies of documents relied were not supplied to 2nd party. That workman was not suffering from any disease. He had not submitted medical certificate of his sickness. Workman not received treatment in Railway hospital. Workman has habitual absentee. He is not entitled to any relief.

6. As per order dated 9-3-2015, enquiry conducted against workman was found vitiated and record of enquiry was not produced. Management was permitted to prove misconduct in Court.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|----------------|
| (i) Whether the management of 2 nd party proves that workman was unauthorisely absent from duty? | In Affirmative |
|---|----------------|

| | |
|---|--|
| (ii) Whether punishment of dismissal imposed against workman is proper and legal? | In Affirmative |
| (iii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

8. Workman filed affidavit of his evidence but he did not appear for his cross-examination contending that enquiry conducted against him was not proper. Management filed affidavit of evidence of witness V.K.Gumasta. Enquiry conducted against workman was found vitiated as record of enquiry was not produced.

9. Management filed affidavit of evidence of witness Ramakant Pare to prove misconduct alleged against workman. In Parta 4 of affidavit of management's witness, it is mentioned that workman remained absent from duty from 5-7-90 to 20-10-90. Chargesheet was issued to workman. Workman had not applied for leave to competent authority. That workman has committed gross misconduct remaining absent from duty unauthorisely without permission or sanctioned leave. The workman failed to participate in reference proceeding. Witness of management was not cross examined. Evidence of management's witness remained unchallenged. Workman failed to appear and adduce his evidence. I do not find reason to disbelieve unchallenged evidence of management's witness about unauthorized absence of workman for the reasons discussed above, I hold that misconduct alleged against workman is proved. Issue No.1 is answered in Affirmative.

10. Issue no.2- workman has not participated in reference proceeding after remand of matter. Advocate S.Pandey claimed no instructions from workman. Considering workman was dismissed for unauthorized absence for the period 5-7-90 to 20-10-90, workman failed to participate in reference, no evidence is adduced by him. The punishment of dismissal calls no interference. I record my finding in Issue No.2 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1337.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 160/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/585/98-आईआर (बी-I)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 160/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.06.2016.

[No. L-12012/585/98-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR
NO. CGIT/LC/R/160/99

Shri Suddeswar Prasad Namdev,
S/o Arjun Prasad Namdev,
Ex-Worker of SBI, Ramgudipara,
Raigarh

...Workman

Versus

Regional Manager,
State Bank of India,
Region-V, Shankarnagar,
Raipur (MP)

... Management

AWARD

Passed on this 20th day of January 2016

1. As per letter dated 19-4-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/585/98-IR(B-I). The dispute under reference relates to:

“Whether the action of the State Bank of India, Raigarh Branch (under the Regional Manager, Region-V Raipur MP in terminating the services of Shri Suddeswar Prasad Namdev, S/o Shri Arjun Prasad Namdev, Ex-Casual Worker w.e.f. 6-3-97 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of Ist party workman is that he was working was waterman on daily wages in 2nd party Bank from February 91 to August 94. He worked continuously more than 240 days in a calendar year. He belongs to other backward class. His services were illegally discontinued. The persons working less number of days were regularised. Ist party workman had submitted representation to ALC. 2nd party Bank did not participate in conciliation process. Failure report was submitted by ALC on 21-10-98. The dispute has been referred.

3. Ist party workman reiterates that he worked more than 240 days in each of the calendar year. Persons working less number of days Shri Mehettar Chouhan, Benudhar Gupta and Paras Namdeo were regularised. A farce interview was made for regularisation. Any specialization is not required for the job. That seniority or experience should be the criteria. 2nd party Bank illegally converted process of regularization into process of direct recruitment. Ist party workman has become overage for employment. He suffered irreparable loss because of the arbitrary act of the Bank. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement at Page 7/1 to 7/8 opposing claim of workman. 2nd party submits that Ist party workman was employed as part time daily rated badly watchman at Raigarh branch. In 1980, he worked for 152 ½ days. Till 1983, he worked for total 221 days. Workman had not completed 240 days continuous service during any of the calendar year. He was not in continuous service. Ist party workman was engaged on daily wages. He was free not to come for duty on next day. Non-engagement of Ist party workman from 25-11-83 does not amount to retrenchment. As workman had not completed continuous service under Section 25 B of ID Act.

5. 2nd party further submits that as per bipartite settlement dated 17-11-87, 16-7-88, 28-10-88, 9-1-91, 9-7-92, workman was given chance for interview on 6-3-97. Workman was found unsuitable for permanent appointment. He was over age at the time of his initial engagement. The selected candidates by committee were given appointment against available vacancies according to seniority. 2nd party denies that workman was continuously working more than 240 days rather the workman had worked for 221 days from 4-11-82 to 24-11-83. The non-engagement of Ist party workman is not in violation of Section 25-F of ID Act. His non-engagement is covered under Section 2(oo)(bb) of ID Act. The case of Ist party workman cannot be equated with Shri Mehettar Chouhan, Benudhar Gupta and Paras Namdeo as Mehettar Chouhan belongs to SC category. He was found suitable for employment by the Committee. Shri Benudhar Gupta working for 168 days till 14-8-91. He was also found suitable by the committee. 2nd party denies that the Ist party workman suffered irreparable loss on account of arbitrary acts of the management. It is reiterated that workman had not completed 240 days continuous service and non-engagement of workman does not amount to retrenchment. Workman is not entitled to reinstatement.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|--|
| (i) Whether the action of the State Bank of India, Raigarh Branch (under the Regional Manager, Region-V Raipur MP in terminating the services of Shri Suddeswar Prasad Namdev, S/o Shri Arjun Prasad Namdev, Ex-Casual Worker w.e.f. 6-3-97 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

7. Workman is challenging termination of his service for violation of Section 25-F of ID Act contending that he worked more than 240 days during each of the calendar year during the period Feb 91 to August 94. The terms of reference pertains to legality of the termination of services of workman from 6-3-97 not include denial of regularisation. As per statement of claim submitted by workman, he was working with 2nd party till August 94 whereas the reference pertains to termination of his service from 6-3-97. The pleadings of workman in statement of claim is not consistent with terms of reference.

8. Workman filed affidavit of his evidence supporting his claim that his services were terminated from 6-3-97. He was working as messenger/ waterman from 1980. He had rendered services for about 17 years. Junior employees Shri Mehattar Chouhan, Benudhar Gupta and Paras Namdeo were regularised. From evidence of workman, Exhibit W-1, W-2 are admitted in evidence. As per Exhibit W-1, workman had worked for 152 ½ days as badly waterman, 29 days as messenger, 11 days as waterman during period April 1980 to July 1981. As per Exhibit W-2, workman worked for total 221 days on daily wages badly waterman from 4-11-82 to 25-11-83. From Exhibit W-1, W-2, evidence of 1st party workman that he was working till 6-3-93 in the Bank is not corroborated. Workman in his cross-examination says he has not pleaded in his statement of claim that he was working with the Bank till 1997. That he worked in the Bank from 1980 to 1983. He claims ignorance in which branch Shri Mehattar Chouhan, Benudhar Gupta and Paras Namdeo were working. He was unable to tell their period of working.

9. Management's witness Sreenath Sundaram filed affidavit of his evidence narrating details of 221 working days of 1st party during April 1980 till November 1983. That workman had not completed 240 days continuous service. Management's witness says workman had not completed 240 days continuous service during any of the calendar year. That regular employees are paid through their Bank accounts. That Shri Mehattar Chouhan, Benudhar Gupta and Paras Namdeo were regularised. They are still working in the Bank. Result of interview was informed to workman. Management's witness denies that workman was continuously working from 1980 to 6-3-97. The evidence of 1st party workman is not supported by document about his working in the Bank till 6-3-97. The uncorroborated evidence of workman cannot be accepted.

10. Learned counsel for 1st party workman Shri Praveen Yadav during course of argument submits that the submissions of 1st party workman are terminated without notice from 6-3-97 and juniors are continued on work. The names of juniors are shown in Para 8 of the affidavit. The 1st party workman illegally terminated. Shri Praveen Yadav in support of his argument relies on ratio held in

Case of Officer Incharge Defence Standardization Cell versus Mukesh Kumar reported in 2013 LAB.I.C.3329. His Lordship dealing with Section 25 F, 2(oo)(bb) of ID Act etc. held workman repeatedly engaged on monthly basis for a period of 3 years. Successive appointments given to him to defeat his right of permanency. His appointment was not contractual employment as stop gap arrangement till filling of vacant post through regular process to attract Section 2(oo)(bb) of IDAct. The termination of his service was held in violation of Section 25-F of ID Act.

The facts of present case are not comparable as the workman was engaged on the basis of agreements time to time. In present case, evidence of 1st party workman that he was continuously working after November 1983 is not corroborated by documents. The evidence of workman that he was continuously working till 6-3-97 cannot be accepted. Therefore ratio held in case cannot be applied to case at hand.

11. Copy of award in R/36/98 is also submitted for consideration. From reading of para-8,9 of the award, it is clear that Branch Manager had admitted that workman was engaged as daily wagers. There was no denial that workman had worked for 240 days in a calendar year. In present case, there was no cogent evidence that workman was continuously working for 240 days prior to termination of his service on 6-3-97. Therefore the termination of workman cannot be said in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Affirmative.

12. In the result, award is passed as under:-

- (1) The action of the State Bank of India, Raigarh Branch (under the Regional Manager, Region-V Raipur MP in terminating the services of Shri Suddeswar Prasad Namdev, S/o Shri Arjun Prasad Namdev, Ex-Casual Worker w.e.f. 6-3-97 is not proved.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1338.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 79/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/25/2011-आईआर (बी-I)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.06.2016.

[No. L-12011/25/2011-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/79/2011

General Secretary,

Dainik Vetan Bhogi Bank Karmchari Sangathan,
F-1, Tripti Vihar, Opp Engg. College,
Ujjain

...Workman/Union

Versus

Chief General Manager,

State Bank of India,
LHO, Hoshangabad Road,
Bhopal

...Management

AWARD

Passed on this 5th day of May, 2016

1. As per letter dated 1-9-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/25/2011-IR(B-I). The dispute under reference relates to:

“Whether the demand of the Union, Dainik Vetan Bhogi Karamchari Sangathan for payment of difference of wages w.e.f. 1-11-1992 to Smt. Krantibai, Sweeper, SBI, MLA Rest House Branch, Bhopal by fixing her pay according to policy of pay fixation of Sweepers-cum-Farrash is legal and justified? To what relief the worker is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary, Daily Wage Employees Union Ujjain. Case of Ist party workman is that he was engaged in MLA Rest House, Bhopal for cleaning, sweeping work from 1-11-1992 on wages Rs.10 per day. Wages were increased to Rs.15, 25 per day. He was paid wages for six days in a week Monday to Saturday. No wages were paid for holidays. That she was working morning and evening for 2 hours. Settlement was arrived between management and Union on 7-2-97 regarding wage payable to sweepers. If area of the branch is 1200 to 2000 sq.ft, 1/3rd regular salary was to be paid.

That she was not paid wages as per above said settlement. She had also filed conciliation proceeding 7(39)2004 for non-payment of bonus. That she was paid bonus Rs.7280 on 13-4-2010. Her services were terminated without notice on 3-8-2010 during pendency of the conciliation proceeding in violation of Section 33 of ID Act. Termination of her service without notice without paying retrenchment compensation is in violation of Section 25-F of ID Act. Workman is claiming difference of wages at 1/3rd pay scale for the period 1-11-97 to 3-8-2010.

3. 2nd party filed Written Statement opposing claim of the workman. 2nd party submits that State Bank of Indore is merged in State Bank of India as per Notification dated 28-7-2010. Award staff is governed by circulars issued by RBI, SBI. The officers in the Bank have no power to appoint sub staff peon messengers. Ist party workman was not appointed as peon following recruitment rules. She not completed 240 days continuous service. The contentions of workman in that regard are imaginary. Ist party was engaged for cleaning, sweeping work as regular peons were not doing such work. Ist party was paid agreed wages. She had not completed 240 days continuous service. She is not entitled to protection of Section 25 of ID Act. The settlements 4th & 8th are applicable to the regular employees of the Bank. Ist party is not entitled to benefit of said settlements. Ist party was never paid scale wages. Payment of bonus to Ist party was made for the work rendered by her. On above contentions, 2nd party prays that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|---------------------|
| (i) Whether the demand of the Union, Dainik Vetal Bhogi Karamchari Sangathan for payment of difference of wages w.e.f. 1-11-1992 to Smt. Krantibai, Sweeper, SBI, MLA Rest House Branch, Bhopal by fixing her pay according to policy of pay fixation of Sweepers cum Farrash is legal and justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. The term of reference pertains to demand of wages to Smt. Krantibai sweeper from 1-1-1992. The claim of Ist party is denied in Written Statement filed by management. Affidavit of evidence of Smt. Krantibai is filed. She has stated in her affidavit that she continuously working in MLA Rest House branch Bhopal from 1-11-92 to 3-8-2010. She was paid bonus rs.7280/- for the period 1-11-92 to March 97. She claims to be eligible for 1/3rd pay scale as per 6 to 9 settlement. In her cross examination, Ist party says she was not given appointment letter, she was doing cleaning, sweeping work during 9 AM to 11 A. she was paid Rs.150 per day. Her name was not sponsored through employment Exchange. She has not passed any examination/ test. Agreed wage were paid to her by the Bank. She was working for 2 hours in the day.

6. Management filed affidavit of witness shri Sanjay Gadge supporting contentions in written Statement. Management's witness stated that workman was not engaged on regular basis following recruitment rules. Her name was not sponsored through employment exchange. Ist party had not completed 240 days during any of the year. In his cross-examination, management's witness claims ignorance about area of the MLA rest House branch building. The building has one latrine and bathroom. Work of cleaning sweeping was done every day. Regular employee was not appointed for said work. Before engagement of Ist party, permission of Controlling Authority was not taken. Appointment letter was not given to Ist party. Management's witness claimed ignorance at what rate wages were paid to Ist party. Management's witness admitted Circular dated 7-2-97, 18-2-97, Exhibit W-5 & W-6. Ist party was not paid wages as per Exhibit W-5,6. Management's witness admits that the policy for payment to sweeper prepared by Bank, payments were made according to the policy. The term of reference does not pertain to legality of termination rather it pertains to the demand for difference of wages as per the settlement. Exhibit W-5 is bipartite agreement dated 7-2-97 prescribes payment of 1/3rd scale wages where the area of the branch office is 1200 to 2000 sq.ft and working hours 6 to 13 hours in a week. The management's witness does not know area of the branch building. In statement of claim, workman has specifically pleaded that the area of the branch is 1200 – 2000 sq ft, he is entitled to 1/3rd scale wages. There is no specific denial about the area of the branch building. Evidence of Ist party in her affidavit is not shown but her evidence in cross-examination shows that she was working 2 hours every day between 9 to 11 AM, she was paid Rs.150/- for a week. Her evidence shows that she was working at more than 13 hours per week. As per policy Exhibit W-5,6, she is

entitled to 1/3rd scale wages from execution of bipartite agreement on 9-2-97 and not from the date 1-1-1992. The documents produced regarding payment of bonus Exhibit W-1, 2,3 as well as Exhibit W- 4 are not relevant to claim of Ist party for difference of wages. For reasons discussed above, Ist party is entitled to 1/3rd scale of wages from 7-2-97. For above reasons, I record my finding in Point No.1 partly in Affirmative.

7. In the result, award is passed as under:-

- (1) Demand of Ist party Union for difference of wages is legal from 7-2-97.
- (2) 2nd party is directed to settle wages of Ist party at 1/3rd scale wages from 7-2-97 till her services were terminated. Amount paid to Ist party as wages be adjusted and the difference of wages be paid to Ist party within 30 days from date of publication of award.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य बिहार ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पटना के पंचाट [संदर्भ सं. आईडी केस नं. 05(सी)/2015] को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12025/01/2016-आईआर (बी-I)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. No. Case No. 05(C) of 2015] of the Central Government Industrial Tribunal-cum-Labour Court, Patna as shown in the Annexure in the Industrial Dispute between the management of Madhya Bihar Gramin Bank and their workmen, received by the Central Government on 20.06.2016.

[No. L-12025/01/2016-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No.: 05 (C) of 2015

Between The management of Chairman, Madhya Bihar Gramin Bank, Head Office – Meena Plaza, South Museum Road, Patna-800001 and their workman Sri Anil Kumar, S/o- Uma Prasad, Vill.- Chak Dharampur Gaurakshini Debisthan, Warsaliganj, Nawada-805130.

For the management : Sri Ravikant Prasad Srivastava, Sr. Manager.

Sri Dhananjay Kumar, Manager.

For the workman : Workman represented himself.

Present :- Bipin Dutta Pathak, Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, dated:- 27th May, 2016

1. The record has been placed today on 11.04.2016. Mr. Dhananjay Kumar appeared on behalf of the management, Madhya Bihar Gramin Bank, Head Office, Patna. Workman Mr. Anil Kumar filed a petition for closing the dispute and passing a no dispute award for which management has no objection.

2. Heard Mr. Dhananjay Kumar on behalf of the management and Mr. B. Prasad on behalf of the workman and perused the record. The present case was filed to decide “ Whether the action of the management of Madhya Bihar

Gramin Bank in imposing the punishment of removal from the service of the bank on Sri Anil Kumar, Part – time sweeper is legal and justified? If not, what relief (S) the workman is entitled to?"

3. In the written statement in para-8 of the management has stated that Sri Anil Kumar submitted his appeal dated-28.03.2015 which is pending for decision.

4. Since the workman do not want to contest the case, so no comment is passed for delaying of the disposal of the appeal by the appellate authority.

5. In the present case workman has been reinstated in the service of Bank as a part time sweeper and prayer has been made for passing a no dispute award. Hence in the result in absence of any evidence on the record and keeping in view of the matter that workman is not contesting the case. Matter is adjudicated that at present "No Dispute" exist between the parties and "No Dispute Award" is hereby passed.

This is my award accordingly.

Dictated & Corrected by me.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1340.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स जादूगर कारपोरेट कंसल्टेंट्स प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ सं. 66/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/64/2014-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2016

S.O. 1340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of M/s. Wizard Corporate Consultants Pvt. Ltd. and their workmen, received by the Central Government on 20.06.2016.

[No. L-12011/64/2014-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 66 of 2014

Parties: Employers in relation to the management of M/s. Wizard Corporate Consultants Pvt. Ltd.

AND

Their workmen

Present: Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the Management : Mr. Uttam Kumar Mondal, Ld. Counsel for M/s. Wizard Corporate Consultants Pvt. Ltd.

Mr. Sandip Kundu, Ld. Counsel for M/s. CITI Bank.

On behalf of the Union : Mr. Malabika Saha, Ld. Counsel.

State : West Bengal

Industry : Banking.

Dated: 27th April, 2016

AWARD

By Order No.L-12011/64/2014-IR(B-I) dated 14.10.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of management of M/s Wizard Corporate Consultants Pvt. Ltd., contractor of CITI Bank in depriving the workmen the agreed wages in the line of minimum wages fixed by the Central Govt. is legal and/or justified? If not, what relief the workmen are entitled to?”

2. *“Whether the action of Principal employer, i.e. CITI Bank by not accepting the demand of the Union of allowing/extending “Agreed Wages” in the line of Central Govt. Minimum is legal and/or justified? If not, what relief the workmen are entitled to?”*

2. When the case is taken up for hearing today, Ld. Counsel appearing for the union and the Ld. Counsel appearing on behalf of both the managements submit that the matter has been settled amicably among the parties out of the Tribunal and they have filed a memorandum of settlement signed between M/s. Wizard Corporate Consultants Pvt. Ltd. and the union. They pray for an Award in terms of the said memorandum of settlement.

3. On careful consideration of the said memorandum of settlement it appears that the terms and conditions of the settlement are fair, reasonable and the same are made for the interest of the parties.

4. Accordingly the said memorandum of settlement is accepted and an Award is passed in terms of the said memorandum of settlement which do form part of this Award as Annexure – A.

Dated, Kolkata,
The 27th April, 2016.

Justice DIPAK SAHA RAY, Presiding Officer

ANNEXURE - A

BEFORE THE HON'BLE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

REFERENCE NO. 66 OF 2014

EMPLOYERS IN RELATION TO MANAGEMENT OF M/S. WIZARD CORPORATE CONSULTANT PVT. LTD.

-AND-

Their Workmen represented by Citi Bank (Kolkata) H.O Contractors' Workers Union

IN THE MATTER OF: -

An application under Section 21(1) of the Minimum Wages Act, 1948;

-And-

-VERSUS-

The Principal, M/s. Citi Bank, Cluster Head, 41, Chowinghee Road, Kolkata & Ors.

...Respondents.

TERMS OF SETTLEMENT FILED ON BEHALF OF WORKMEN AND THE MANAGEMENT OF WIZARD CORPORATE CONSULTANT PRIVATE LTD

The humble joint petition of Compromise between the parties most respectfully

S H E W E T H :

1. That the company, namely M/s. Wizard Corporate Consultant Pvt. Ltd. entered into a contract with Citi Bank for the purpose of rendering various activities which are enumerated in the agreement. The said agreement was executed on 1st February, 2013 with retrospective effect from 1st June, 2012. The basic nature of jobs to be performed by the opposite party no. 2 are to carry out the CMS pickup, GCB pickup and processing, Airtel processing etc.
2. Prior to the effective date of contract between Citi Bank and the opposite party no. 2, the said duties were being carried out by Stech Info System. The total number of employees employed by the Stech Info System was 83. On extension of the contract between Citi Bank and Stech Info System, all the employees of the erstwhile contractor were enrolled by the opposite party no. 2 company. Since then the contractual obligations have been duly discharged by the opposite party no. 2 vis-à-vis Citi Bank. The terms and conditions of all the employees

of Stech Info System, continued with the opposite party no. 2 without any adverse affectation of any of their rights. The opposite party no.2 is executing the work for Citi Bank at its Kolkata branches.

3. The opposite party no. 2 states that out of those 83 employees, 25 employees owe their allegiance to Bengal Provincial Banks' Contract Employees Association and 58 employees owe their allegiance to Citi Bank (Kolkata) H.O. Contractors' Workers Union (affiliated to INTTUC).
4. On 2nd May, 2013, the Citi Bank (Kolkata) H.O. Contractors' Workers Union submitted a purported charter of demands to the management of the opposite party no. 2 company. Such charter of demands did not mention about implementation of any pay structure according to Central Labour Laws.
5. A meeting was held on 22nd July, 2013 between the management of the opposite party no. 2 company and the Union wherein it was clarified that the employees were being paid wages on compliance of the rates of minimum wages notified by the Government of West Bengal. It is pertinent to state that insofar as the opposite party no. 2 company, is an independent establishment; it is not under the control of either the State Government or the Central Government. The opposite party no. 2 is a private juristic entity managed by its Board of Directors having no amount of State control or State aid.
6. The President of Citi Bank (Kolkata) H.O. Contractors' Workers Union submitted a representation to the Central Labour Commissioner demanding implementation of pay structure according to Central Labour Laws for all its employees. The said representation dated 23rd September, 2013 was taken up in conciliation ; wherein the opposite party no. 2 was also asked to appear along with the management of Citi Bank.
7. In course of the conciliation proceeding, the management of Citi Bank did not appear. It was specifically stated by the opposite party no. 2 in the conciliation proceeding that the Citi Bank pays a contractual rate to the opposite party no. 2 towards the services rendered by the opposite party no. 2 to the Bank, which also includes the wages of the 83 employees and unless such contractual rate is enhanced by the management of Citi Bank, the question of enhancement of wages would not arise. In any event, the appropriate government in relation to the establishment of the opposite party no. 2 being the State Government, the minimum wages notified by the Central Government would not apply to the establishment of the opposite party no. 2. Furthermore, the categories of employment which are rendered by the 83 employees for and on behalf of Citi Bank do not come within the purview of "Scheduled Employment", so as to attract the mischief of liabilities under the Minimum Wages Act, 1948. The minimum wages notified by the State Government, which are currently being complied with, the opposite party no. 2 can afford to pay to the employees, considering the nature of contract between Citi Bank and the opposite party no. 2.
8. The management of Citi Bank, did not attend the conciliation proceedings but wrote letters purporting to justify the absence of master servant relationship as the cause for their non-attendance. Such representations were made in writing.
9. The conciliation having failed, the Conciliation Officer submitted his failure of conciliation report to the Central Government, whereupon the pretended order of reference has been made. The Central Government by an order of reference referred the dispute to the Learned Tribunal for adjudication.
10. It is stated that the opposite party no. 2 had all along paid the agreed wages to the concerned employees who are workmen within the meaning of the Industrial Disputes Act, 1947. Such agreed wages would mean the contractual rates of wages between the management of the opposite party no. 2 and its employees on the basis of the terms and conditions of appointment. There can be no "agreed wages" which is "in line of minimum wages" fixed by the Central Government.
11. The opposite party no. 2 has no obligation to pay minimum rates of wages notified by the Central Government. Furthermore, the nature of duties performed by the employees of the opposite party no. 2 does not fall within the scope of Scheduled Employment under the provisions of the Minimum Wages Act, 1948.
12. It is stated that during pendency of the ref. case the a meeting was held before the Dy. Central Labour Commissioner on 10.12.2015 and both the parties was agreed a certain terms a condition and Union was agreed to withdraw the pending reference before the Central Government Industrial Tribunal. A copy of the said minutes of the meeting is annexed hereto and marked as Annexure "A".
13. The terms and condition of the said minutes dated 10/12/2015 are as follows :-
 - (i) It is agreed by and between the parties that the minimum gross wages would be Rs. 8,200.00 per month,

- (ii) It is agreed by and between the parties that VDA would be paid twice in a year in the month of January and month of July as per Government of West Bengal notification under unskilled category of Schedule No. 9.
- (iii) It is agreed by and between the parties that the date of implementation of the said minutes would be effected from 01.12.2015 and the VDA would be paid with effect from 01/01.2016.
- (iv) It is agreed by and between the parties that in respect of arrear of wages, further discussion is to be required and to resolve the issue.
- (v) It is agreed by and between the parties that the rates of minimum gross wages would be reviewed in future after every three years.
- (vi) It is agreed by and between the parties that the Union will withdraw the said reference case pending before the Learned Tribunal.

14. It is further agreed by and between the parties that this settles the disputes fully and finally between the parties and neither any of the party will have any allegation against each other in future.

15. It is further agreed by and between the parties that this terms and conditions of the above settlement is binding upon the parties.

16. It is states that the parties also entered into a settlement out of the Learned Tribunal and the disputes have been resolve between the parties fully and finally.

A copy of the said settlement is annexed hereto and Marked as annexure "Y"

17. It is agreed by and between the parties that in view of the above terms and conditions then Reference No. 66 of 2014 pending before the Learned Tribunal be finally disposed of.

18. The parties are fioling this Joint petition of compromise for passing an award by recording the terms and conditions.

19. It is submitted that this joint compromise petition be taken on record and in view of the said petition appropriate order be passed by the Learned Tribunal.

20. This petition is made bonafide and in the ends of justice.

In this aforesaid circumstances it is most respectfully prayed that your Lordship may graciously be pleased to :-

- (a) pass an award as per the terms and conditions of, this Joint compromise petition by recording evidence it required;
- (b) pass such other or further orders and/or directions as to this Learned Tribunal may deem fit and proper.

And for this act of kindness, your petitioners as in duty bound, shall ever pray.

VERIFICATION

I, Krishnendu Saha working as Director in WIZARD Corporate consultant Private Limited having my office at 1st Floor, 17, Collin Lane, Kolkata - 700016, do hereby declare and say that the statements contained in paragraph Nos. 1,2 and 5 are true to my knowledge, those contained in paragraphs 3,4,6 and 8 are based upon my information derived from the records of the case and verily believed by me to be true and rest are my respectful submissions to this Hon'ble Presiding Officer.

I, sign this verification on this the day of January, 2016

WIZARD CORPORATE CONSULTANTS PVT. LTD.

Sd. Illigible

Director

Deponent

Identified by me

Sd/-

Uttam Kumar Mandal

VERIFICATION

I, Dipan Kar Das son of Sri Ranjit Kumar Das aged about 34 years represented by the union having my office at Jainkunj, Kolkata - 700088, do hereby declare and say that the statements contained in paragraph Nos. 1,2 and 5 are true to my knowledge, those contained in paragraphs 3,4,6 and 8 are based upon my information derived from the records of the case and verily believed by me to be true and rest are my respectful submissions to this Hon'ble Presiding Officer.

I, sign this verification on this the 20th day of January, 2016.

Uttam Kumar Mandal

Before the Hon'ble Presiding Officer Central Government Industrial Tribunal at Kolkata

Reference No. 66 of 2014

In the Matter :

Employees in relation to Management of M/s. Wizard Corporate Consultant Pvt. Ltd.

And

Their Workmen represented by Citi Bank (Kolkata) H.O. Contractor Workers Union

JOINT PETITION

Uttam Kumar Mandal,
Advocate

“Olisa House”

4th, Govt. Place North, 2nd Floor, Room No. 210
Kolkata-700 001

(M) 9830424536

नई दिल्ली, 28 जून, 2016

का.आ. 1341.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, पुणे के पंचाट (संदर्भ सं. 05/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/44/2009-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2016

S.O. 1341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Pune as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.06.2016.

[No. L-12012/44/2009-IR (B-1)]

RANBIR SINGH, Section Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL MAHARASHTRA AT PUNE

Reference (IT) No.05 of 2010

The General Manager,
State Bank of India,
Synergy Bldg., Bandra-Kurla Complex
Bandra (E), Mumbai - 400 051

...First Party

AND

Shri Madhukar S. Gaikwad,
Omkar Bunglow, Plot No.43,
Golibar Maidan, Post-Phaltan,
Dist-Satara (Maha)

... Second Party

CORAM : Shri. D.H. Deshmukh, Presiding Officer.

Appearances : Mr. D.V. Kulkarni, Advocate for First Party

Mr. R.P. Shaligram, Advocate for Second Party.

AWARD

(Dated :05.05.2016)

This is the reference made by the Government of India, Ministry of Labour & Employment. The dispute mentioned in the reference schedule is thus:-

"Whether the action of the management of State Bank of India imposing the penalty of dismissal from the services w.e.f. 23.05.2006 of Shri Madhukar S. Gaikwad is justified ? If not, what relief he is entitled to and from which date ?

2. The dispute is between the General Manager, State Bank of India (first party for short) and Madhukar S. Gaikwad (second party for short). The second party workman has filed a statement of claim, contending that he joined the first party bank on 17.08.1981 as a clerk/ cashier, and continued to serve till his dismissal w.e.f. 23.05.2006, and at that time he was serving as a Senior Assistant in Phaltan branch of the bank. The second party was served with a charge-sheet dated 10.05.2004, and thereafter, enquiry was conducted, and finally the dismissal order was issued on the basis of alleged findings of guilt submitted by the enquiry officer. The second party has contended that the charge-sheet was served with a sole intention to terminate the services in utter violation of the principles of natural justice in the conduct of the enquiry. The second party has stated in detail as to how the charge-sheet is wrong, as to how the enquiry was conducted in violation of the principles of natural justice, and further, as to how the findings are based on no evidence. The second party has commented on nature of the enquiry conducted and on the findings of the enquiry officer. However, I do not think it necessary to reproduce the pleadings in that regard since the same has already been done while deciding the preliminary issues of fairness of the enquiry and justifiability of the findings of the enquiry officer.

3. The second party has contended that, he was charged of accepting of Rs.25,000/- from Shri Prakash D. Pawar in consideration of approval of housing loan. Infact, there was no such proposal submitted by Pawar. According to the second party, the allegation of accepting Rs.25,000/- for processing the loan case was false. It is contended that Pawar was involved in criminal cases like theft of motorcycle. The police had provided details of five criminal cases pending against Pawar. Shri Pawar does not possess any property in Phaltan city or in nearby villages. There was no evidence in the enquiry which could prove the charges. The alleged key witness Pawar was not examined. In this way the second party has challenged the dismissal from service. The second party has contended that the action taken is illegal, unjustified and non-est. It is contended that meritorious service of all these years were not considered. The second party has suffered economic hardship along with his family. Then, it is contended that the second party has been unemployed since the date of dismissal. He and his family members are facing starvation. The second party has been putting best efforts to obtain some gainful employment, but has miserably failed to get any. The second party therefore, wants reinstatement with continuity of service and full back wages, with all consequential benefits.

4. The first party bank has resisted the claim denying all the adverse allegations. The appointment, service period, etc. is not denied. The first party has contended that the enquiry was fair and proper, and the findings are also correct. There is no reason for this Tribunal to hold that the enquiry stands vitiated. The findings of the enquiry officer are self explanatory, etc.

5. The first party has contended that the second party workman was served with a charge-sheet dated 10.05.2004 contending, inter-alia, that the second party had accepted bribe in an illegal manner from Prakash Pawar for processing his loan to be sanctioned by the competent authority. The said Prakash Pawar had made a written complaint to Branch

Manager on 05.11.2003. The second party workman thereafter, withdrew Rs.25,000/- from his account and managed to withdraw the complaint of Pawar. A full-fledged enquiry was conducted by the bank, and reasonable opportunity was given to the second party to defend himself by engaging a representative. The enquiry was conducted on 31.05.2004 and concluded on 09.11.2004. Opportunities were given, but the second party failed to avail of the said opportunities. Considering the gravity of the proved misconduct, and taking into consideration the extenuating circumstances, the bank found that the second party was not to be continued in the service, and therefore, the impugned action was taken, etc.

6. The issues and my findings thereon are as follows:-

| Issues | Findings |
|---|---------------------|
| 1. Whether the departmental enquiry is fair and proper ? | Already decided; |
| 1A. Whether the findings of enquiry officer are justified ? | Already decided; |
| 2. Whether the impugned action is justified ? | No; |
| 3. What relief/award ? | As per final award. |

REASONS

7. The learned counsel for the second party Shri R.P. Shaligram has pressed for disposal of the reference as the arguments were heard. Shri R.P. Shaligram, Advocate pressed for disposal of the reference during the summer vacation period, to which Shri D.V. Kulkarni, Advocate for the first party had no objection. Advocate for both the parties have submitted a joint pursis Exh.CU-1 on 30.04.2016 stating jointly that as the matter is fully heard, order may be passed in vacation. Though, its vacation period, I am not on vacation. The matter is more than five years old, and has been heard by me, and therefore, I am inclined to dispose it of.

This court on 29.10.2015, after hearing both the sides, had passed an order holding that the departmental enquiry conducted against the second party is not fair and proper, and the findings of the enquiry officer are not justified. Since the the proceedings are under the I.D. Act, the scope of powers of interference of the Tribunal are wider then of the scope of powers while deciding a complaint relating to unfair labour practices. In the aforesaid order, the proceedings were adjourned so as to enable the first party bank to lead evidence, if any, to prove the misconduct and justify the action taken. The first party bank had already produced documents including the enquiry papers. After the order dated 29.10.2015, the first party bank examined one witness and closed its evidence, whereas the second party workman also examined himself, apart from producing some documents.

8. The second party at the relevant time was working as a Senior-Assistant. The second party was charge-sheeted alleging misconduct of willful damage or attempt to cause damage to the property of the Bank or any of its customers, doing any act prejudicial to the interest of the Bank. The charges were framed under clause-6(a) of settlement. The relevant clauses were 5(d) and 5(j). The allegations against the second party was that while working as a Senior Assistant at Phaltan branch, he had accepted Rs.25,000/- from Shri Prakash Pawar for processing the housing loan to be sanctioned by the competent authority. That on 05.11.2003, said Shri Pawar had lodged a complaint with the branch, and subsequently, the second party on 06.03.2003 returned the amount to Shri Pawar at around 4.00 pm, and also got signature of Shri Pawar on the letter dated 06.03.2003. This Tribunal in the order dated 29.10.2015 had found from the oral as well as, documentary evidence, that the enquiry was not fair & proper, and findings are also not justified.

9. In order to justify the dismissal, the first party Bank has examined Shri Diwakar Anandappa. Shri Diwakar has stated in his evidence that he was serving in State Bank of India, and in the year 2003 he was a Branch Manager at Phaltan. He was overall incharge of the Bank. The second party workman was employed as a Senior Assistant. He was dealing with the loans and advances cases proceesing. The job of the second party was to complete clerical work of processing. Shri Diwakar has stated that on 05.11.2003 when he was in the branch, he heard shouting outside in the branch. He called that person and asked the reason. That person told Diwakar that Senior Assistant Shri M.S. Gaikwad took money from him for proceesing the housing loan. That person told Diwakar that no loan was being sanctioned, and therefore, he wanted back his money. Shri Diwakar asked that person to go outside and settle his grievances. The name of the person was Prakash Pawar. Shri Diwakar was shown the letter from the record, which he has confirmed as the same. Shri Diwakar asked Pawar to wait for sometime, and then he called the second party workman. The second party workman has stated that he had not taken any money, and everything is false. Shri Pawar was insisting for the money. Shri Diwakar told that on the next day Shri M.S. Gaikwad (second party) came to Shri Diwakar and told that everything was resolved and there was no grievance. A document signed by Shri Pawar and second party was handed over to Diwakar, which is dated 06.11.2003 and the copy is on record. Shri Gaikwad (second party) told Diwakar, the grievance was settled as stated in the document dated 06.11.2003.

10. In cross-examination, Shri Diwakar has admitted that Branch Manager is the competent authority to sanction housing loan upto certain limit. The first party had not received any application or proposal of housing loan of Prakash Pawar. The documents at Sr.No.28 and 32 do not bear any inward number of the branch or anything to show that same were received by the branch. The two documents are marked as Exh.C-4B & C-4C, and according to Shri Diwakar, the

originals of those documents are produced. Admittedly, in Exh.C-4C there is no mention of housing loan transaction. There is nothing on record to show that Shri Diwakar had reported the matter to superiors. Shri Diwakar then admits that the second party Gaikwad had not committed any misconduct.

11. The second party workman in his evidence has stated that contents of the statement of claim are correct. He does not admit the contents of written statement of the first party. The second party stated about his appointment, termination and that the Senior Assistant was a clerical post. The charges against him were totally false. He has not accepted Rs.25,000/- from Prakash Pawar for processing the housing loan to be sanctioned by the competent authority. There was no housing loan proposal of Prakash Pawar in the bank. The complaint of Pawar is false. He has not committed any misconduct, etc. The contents of Exh. C-4B are also totally false. The contents of Exh.C-4C are not related with the charge-sheet. The second party stated that he denies the documents produced by the management. The second party deposed as to the documents produced with list Exh.U-5, which are the certificate issued by Gram Panchayat and other authorities. The second party has stated that he has rendered 23 years' of continuous service with the Bank, and after his termination he has tried his level best to get the job elsewhere, but could not succeed. The second party is unemployed since his illegal termination. Due to termination the second party as well as, his family members are facing great hardship. The second party is in need of a job. The second party has demanded full relief.

12. In cross-examination, the second party has admitted that he was working in the Housing Loan Department. He denies that because of his official work he was knowing Prakash Pawar. He admits that Pawar made complaint to the Branch Manager, but he does not know if it was that the second party had taken Rs.25,000/- from Prakash Pawar. The second party does not know if on 06.11.2003 Pawar made a complaint to the Branch Manager that the second party had taken Rs.25,000/- from Pawar. The second party denies that he had taken that amount and paid to Pawar and had given in writing. The second party admits his signature on the document Exh.C-4C, which was produced in the enquiry proceedings. The suggestion that amount of Rs.25,000/- was taken and was returned after the complaint was made, is denied. Further admissions indicate that Shri Popat Dinkar More was working as a Messenger in the Bank. The second party had taken from him Rs.1340/-, but for buying stamps. The second party does not know whether Popat More had complained to the union in that regard. The second party admits that there is rule prohibiting borrowing from the bank employees and the customers. Prakash Pawar was not the customer of the bank. The second party could not tell how he came to know Prakash Pawar. The second party has stated that he has not produced documents showing efforts for alternate employment, but has stated that he would produce the same before this Tribunal. The second party denies suggestion that he made no efforts for alternate employment because he has got two acres of agriculture land.

13. The first party has produced enquiry proceedings, which enquiry has been held as not fair and proper. In the proceedings there are two documents Exh.C-4B & C-4C. Exh.C-4B is a complaint purportedly made by Prakash Pawar to the Branch Manager of Phaltan branch of the bank. In the complaint it is stated that the second party had taken Rs.25,000/- for granting loan, and thus Pawar was cheated, etc. However, on 06.11.2003 same Prakash Pawar gave a detailed letter to same Branch Manager of the bank stating that the second party had not cheated him, but some outsider misused the name of the second party and cheated him. By this letter dated 06.11.2003 Pawar appears to have stated that he was wrong in making false complaint against the second party, and he voluntarily withdrew the complaint made against the second party. Exh. C-4C is a note signed by the second party and Prakash Pawar. In the document it is stated that the second party was returning amount of Rs.25,000/- taken from Prakash Pawar, and that there was no complaint or grievance against each other.

14. In the order dated 29.10.2015 on enquiry issue, this Tribunal had referred to certain observations of the enquiry officer. The enquiry officer himself had observed in his findings that the bank had failed to produce the witnesses. According to the enquiry officer, first party bank could have brought more witnesses named by the enquiry officer in the report. Then, the enquiry officer has observed that out of seven witnesses cited, only two were examined. The enquiry officer also observed that the fact that the second party accepted Rs.25,000/- from Prakash Pawar for processing housing loan is not directly proved. The enquiry officer further observed that due to non presenting of three witnesses natural justice was denied to the second party.

15. Prakash Pawar who allegedly paid Rs.25,000/- to the second party was to be examined in the enquiry. The said Pawar was neither examined before the enquiry officer nor before this Tribunal. Then Manager Diwakar does not personally know about the transactions. The admissions given by him indicate that the work of second party was to complete the clerical work of processing of the loan cases. No loan application of Pawar was submitted to the Bank. The Manager Diwakar in clear terms admitted that second party has not committed any misconduct. Even if we take into consideration the documents produced during the enquiry, which are tried to be proved here namely, Exh.C-4B and C-4C, it would not be reasonable, and of course safe, to rely on those two documents, to infer that Rs.25,000/- were taken for sanctioning housing loan. First of all, Pawar has not come forward to prove his complaint. Same Pawar on the next day had withdrawn his complaint, explaining in detail as to how he himself understood, etc. Exh.C-4C may show that second party had taken amount of Rs.25,000/- from Prakash Pawar and the same was returned and thereafter, there was no grievance left. This particular Exh.C-4C does not establish the allegation that the amount was taken for housing loan sanction, inter-alia, because Pawar never applied for loan, which is not disputed.

16. The documents produced with Exh.U-5 are proved by the second party, which are collectively marked as Exh.U5-A. Those are the certificate of Gram Panchayat and other authorities. These documents indicate that Shri Prakash Pawar had no land or property in his name in and around Phaltan. The documents are original. The document and letter dated 08.08.2007 is given by Sub Divisional Police officer, Phaltan, along with a statement signed by the Police Inspector. The statement shows cognizable offences in as many as five cases against Prakash Pawar. From these documents, the second party wanted to show that Prakash Pawar at the relevant time did not have any land or any building in and around Phaltan, so as to require him to apply for housing loan. The Police document is produced to show that Prakash Pawar was a person with criminal background. The second party in his evidence stated clearly, denying the charges.

The evidence adduced, after passing of the order on preliminary issue, falls short to establish the allegations of accepting bribe of Rs.25,000/- in consideration of sanctioning of housing loan. Now, if we presume that it was a personal loan taken by the second party from Prakash Pawar, then undisputedly Prakash Pawar was not the customer of the bank, at-least this is in-disputable. Secondly, it is not the charge that a personal loan was taken by the second party without permission. Viewed from any angle, I do not find the allegations or the charges, proved by the acceptable evidence/material on record.

17. Shri D.V. Kulkarni, the learned counsel for the first party had produced a copy of some part of Discipline & Disciplinary proceedings (the last edition as on 01.02.2007). The copy is produced on the point that personal loan cannot be taken by a bank employee. In my view, that is not the issue before me. Taking personal loan is also not the charge. I have only expressed probability that the second party might have taken Rs.25,000/- from Prakash Pawar as a personal loan, which was returned. Since that is not the charge, the second party cannot be held guilty for the same at least in this proceedings. Shri D.V. Kulkarni, had relied upon **State Bank of India & Anr. V/s. Bela Bagchi & Ors., AIR-2005-SC-3272**, on the requirement of exercising higher standards of honesty and integrity by bank officers and employees. What is held is indisputable but of no assistance to the first party bank, in this case, as the charges are not proved. In short, I find that first party bank has failed to established the allegations or to prove the charges against the second party. The dismissal can be said to be illegal as well as unjustified.

18. The dismissal being illegal and unjustified, will have to be set aside. In such a contingency, the normal relief is reinstatement with continuity of service and back wages. The first party has neither pleaded nor proved by any evidence that the second party has been gainfully employed all these years. The second party on the other side has pleaded and also stated in his evidence that he has been unemployed and has not got job elsewhere despite efforts. According to the second party, he and his family are facing great hardship, etc. The second party thereafter produced two letters dated 05.03.2007 and 22.08.2008 from some finance society to indicate that he had tried to secure employment, but could not get the one. Shri D.V. Kulkarni, the learned counsel for the first party bank had referred to the **General Manager, Haryana Roadways V/s. Rudhan Singh, 2005-5-SCC-591**, on the point of back wages. I have gone through the judgment. It appears that in that case there was violation of provision of Section-25F of the I.D. Act, and therefore, the entire back wages were awarded. Shri D.V. Kulkarni, the learned counsel for the first party had earlier placed reliance on five judgments as per list Exh.C-6, but that was at the time of order on preliminary issues, and accordingly those judgments were considered by this Tribunal.

19. Having considered everything, including the submissions of Shri R.P. Shaligram and D.V. Kulkarni, the learned counsels for the parties, I find that the dismissal is illegal and unjustified, as the charges could not be proved. The service record, according to the second party, was clean and meritorious. The first party could not bring on record anything to show that past service record of the second party was bad. The second party has been kept out of employment for a charge which is not proved. Under the circumstances, there is no reason to deviate from the normal rule of reinstatement with continuity of service and back wages. The first party is a public sector bank. There were seven witnesses to be examined in support of the charges. The key witnesses were not examined earlier nor even now. Back wages will have to be paid from coffer of public sector bank. There is no evidence of gainful employment. The dismissal is of 2006. We are now in the year 2016. There is some probability of the second party having performed some work, and earned atleast to some extent. Having considered the facts and circumstances, the ends of justice would be met if 70% of the back wages are granted to the second party. Thus, the dismissal order dated 23.05.06 served upon the second party is liable to be, and is hereby accordingly, set aside. The second party should be reinstated with continuity of service and all the incidental benefits, as well as 70% of the back wages from the date of dismissal till the date of actual reinstatement. In the event, the second party has already attained the age of superannuation, according to the bank rules, the second party would be treated as having been continued in the employment from the date of dismissal till the date of superannuation, and would be entitled to continuity in service and 70% of the back wages from the date of dismissal till the date of superannuation, with all incidental monetary benefits, as if he had continued to serve the bank. With this, the following award.

AWARD

1. The first party State Bank of India, shall reinstate the second party Shri Madhukar S. Gaikwad with continuity of service and 70% of the back wages along with all incidental monetary benefits from the date of dismissal till the date of actual reinstatement. In the event the second party has crossed the age of superannuation, the first party bank shall treat the second party as have been in employment during the aforesaid period, and shall pay him 70% of the back wages as well as all the incidental monetary benefits, as said herein above.
2. No order as to costs.
3. The award be sent to Government of India, Ministry of Labour.

Pune :

Dated :05.05.2016

D. H. DESHMUKH, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1342.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अरुनाक्षुलम के पंचाट (संदर्भ सं. 54/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-41012/118/2003-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2016

S.O. 1342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the management of S. Railway and their workmen, received by the Central Government on 20.06.2016.

[No. L-41012/118/2003-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM****Present:** Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer(Friday the 26th day of February, 2016/7th Phalgun, 1937)**ID 54/2006****[Formerly ID 7/2003 (Central) of the Labour Court, Kozhikode]**

Workman : Shri T. Janardhanan,
C/o Ramakrishnan P.C.,
Gandhi Colony,
Room No.15,
Karaparamba,
Kozhikode.

By Adv. Shri C. Anilkumar

Management : The Divisional Railway Manager,
S. Railway,
Divisional Office,
Personnel Branch,
Palakkad - 678001.

By Advs. Shri M.C. Cherian
(Sr. Standing Counsel for Railways) &
Shri. Pramod Kumar

This case coming up for final hearing on 25.02.2016 and this Tribunal-cum-Labour Court on 26.02.2016 passed the following :

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour vide its Order No-L-41012/118/2003-IR(B-I) dated 30.06.2003 referred the industrial dispute scheduled thereunder for adjudication.

2. The dispute is:

“Whether the punishment of dismissal imposed on Shri T.Janardhanan by the management of Southern Railway is proportionate to the misconduct of long absence from duty? If not, what relief is the applicant entitled and since when?”

3. The dispute was originally referred before the Labour Court, Calicut for adjudication. From the Labour Court, Calicut it was numbered as ID 7/2003. Subsequently the matter was transferred to this Court for adjudication and it is renumbered as ID 54/2006.

4. After receipt of the case records from the Labour Court, Calicut the parties appeared before this Court through their respective counsel. Subsequently the matter was stayed by the Hon’ble High Court of Kerala, Ernakulam as per the order in WPC No.21786/2005. The Hon’ble High Court of Kerala, Ernakulam disposed the Writ Petition – WPC No.21786/2005(R) and this Court received the communication relating to the same on 06.11.2015.

5. The contentions of the workman in brief are as follows:

The workman involved in this dispute was employed as Sweeper-cum-Porter (SCP) under the management of Southern Railway. He joined the services of the management on 06.05.1977 and he was continuously employed till 29.08.1983. On 29.08.1983 he was terminated from the service without any justified reason. The management issued a chargesheet alleging unauthorized absence. The allegation is false and baseless. The management conducted an enquiry in violation of the principles of natural justice. Before commencing the enquiry copy of the chargesheet and other relevant documents were not furnished to the workman. The enquiry was conducted in a language not known to the workman. The workman was compelled to put his signature in the documents as dictated by the enquiry officer. The enquiry officer conducted the enquiry without following the principles of natural justice and without affording reasonable opportunity to the workman to substantiate his contentions. The workman is innocent regarding the allegations levelled against him. The management failed to prove the misconduct alleged against the workman. The workman has been illegally terminated from the services of the management. False allegations were levelled against the workman as a result of the personal animosity between the workman and the then Station Master of Sangeri Railway Station in Tamil Nadu where he was employed for some time. The Station Master therein was instrumental in foisting false allegations against the workman.

6. The workman repeatedly requested the higher officials to reinstate him in service. Being an illiterate and ignorant person he was unaware of the seriousness of the issue. He approached the Hon’ble Railway Minister, His Excellency the President of India and several other dignitaries for the redressal of his grievance. The workman has stated that the punishment imposed by the management on him is illegal, unjust and disproportionate to the allegations levelled against him. He has requested to set aside the dismissal order, reinstate him with back wages, continuity of service and all other incidental benefits thereto.

7. The management filed written statement contending as follows:

The claim of the workman is time barred. He was removed from service w.e.f.29.08.1983 for serious misconduct. He has submitted the representation before the Regional Labour Commissioner, Cochin 20 years after his removal from the service. Against the order of removal from service the employee preferred an appeal before the appellate authority. The appellate authority considered the matter in detail and dismissed his appeal. Thereafter he preferred a revision petition before the General Manager which also ended in dismissal. The subsequent representation before the Hon’ble Minister for Railways and His Excellency the President of India was considered in detail and it was rejected and communicated to the workman as per order dated 23.12.1998. The Railway administration at different levels scrutinized the case records of the workman and found that his claim is not sustainable in law.

8. The facts of the case reveal that the Central Administrative Tribunal alone has got the jurisdiction to adjudicate the matter. The Labour Court has no jurisdiction to decide the matter in issue.

9. While working at Tellicherry, the Station Master reported that the workman habitually absented from duty and on the basis of which instructions were issued to the workman to improve his performance. Again he continued his absence from duty and accordingly disciplinary proceedings were initiated against him. Sufficient opportunity was

afforded to the workman to substantiate his contentions. The punishment imposed on the workman is in proportion to the gravity of charges alleged against him. The management has requested to disallow the claim of the workman.

10. The workman filed rejoinder reaffirming the contentions in the claim statement.

11. On behalf of the management MW1 was examined and Exts.M1 to M6 are the documents marked. The workman tendered evidence as WW1. No documents were marked on his behalf.

12. After vacating stay by the Hon'ble High Court, notice was issued from this tribunal to both the parties. The management entered appearance through counsel. The letter issued to the workman returned with the endorsement that the addressee is no more and hence returned. Thereafter the matter was posted for taking steps if any to implead the legal representatives of the deceased workman. Even after granting repeated adjournments the legal heirs of the workman have not come forward nor filed any application to get themselves to be impleaded as supplemental parties in this proceedings. Heard the learned counsel for the management.

13. The points for determination are:

“(i) Whether the workman has committed the misconduct as alleged by the management?”

“(ii) Whether the punishment imposed by the management is excessive and disproportionate?”

“(iii) What relief the legal heirs of the workman are entitled?”

14. Point Nos.(i) & (ii):- The workman was employed under the management as Sweeper-cum-Porter (SCP) w.e.f. 06.05.1977. According to the workman he continued the services under the management till 29.08.1983, on which date he was terminated from the service. He has stated that the decision of the management to terminate his services was without any justifiable reason. He has stated that the chargesheet alleging unauthorized absence, issued by the management is not sustainable in law. According to him false allegations were levelled against him by the management to find out a reason for denying employment to him. He has also stated that the enquiry conducted by the management preceding the termination order was in clear violation of the principles of natural justice and without affording sufficient opportunity to substantiate his contentions. He has alleged personal animosity against him by the then Station Master at Sangeri Railway Station in Tamil Nadu. He would also state that at any rate the punishment imposed by the management is disproportionate to the charges levelled against him.

15. The management has denied the contentions of the workman. According to the management the workman willfully abstained from duty and in spite of repeated instructions he failed to report for duty. According to the management, the enquiry was conducted after affording sufficient opportunity to the workman and by following the principles of natural justice.

16. Even though the workman has contended that the charges levelled against him are false, baseless and not sustainable in law, Exts.M1 and M2 documents reveal that he has in clear terms admitted his unauthorized absence from duty. Even though he has pleaded mercy and leniency in awarding the punishment there is no acceptable proof to show that the workman was diligent in attending the office regularly while he was employed under the management. The evidence entered by the workman as WW1 is not sufficient enough to arrive at a conclusion that he remained absent from duty due to any justifiable reason. The allegation against the workman is that he habitually absented from duty from 27.10.1980 to 15.12.1980; from 25.12.1980 to 01.01.1981 and from 28.03.1981 to 04.08.1981. From Exts.M1 and M2 documents and the evidence tendered by MW1, it is evident that the workman has committed the misconduct as alleged by the management.

17. Before imposing the punishment the management has afforded sufficient opportunity to the workman to substantiate the reason for the unauthorized absence from duty. The workman has not furnished any justifiable explanation for his unauthorized absence from duty. Therefore it cannot be held that the punishment imposed by the management was excessive or disproportionate. It follows that the punishment imposed by the management is proportionate to the misconduct committed by the workman. Hence the points for determination are answered against the workman.

18. Point No.(iii):- In view of the finding on Point Nos.(i) and(ii) the legal heirs of the workman are not entitled to the relief claimed by the workman.

In the result the dispute is answered to the effect that the workman/his legal heirs are not entitled to get any relief as per this reference. The award is passed accordingly.

The award will come into force one month from the date of its publication in the Official Gazette.

SASIDHARAN K., Presiding Officer

APPENDIX**Witness for the workman**

WW1 01.06.2005 Shri. Janardhanan. T

Witness for the management

MW1 19.05.2005 Shri E.S. Subramanian

Exhibits for the workman - NIL**Exhibits for the management**

M1 - Letter dated 29.03.1986 (in original) for reinstatement by the workman addressed to the Divisional Railway Manager, Southern Railway, Palghat.

M2 - Appeal (Reminder) dated 18.12.1986 (in original) against the penalty of removal from service by the workman addressed to the Divisional Railway Manager, Southern Railway, Palghat – 2.

M3 - Copy of the letter dated 01.02.1992 for reinstatement by the workman addressed to the Chief Personal Officer, Southern Railway, Madras.

M4 - Letter No.P(A)94/J/138 dated 12.10.1992 (in original) issued by the A.P.O/T, Southern Railway, Headquarters Office, Personnel Branch, Madras-3 to the workman.

M5 - Letter dated 29.03.1997 (in original) for reinstatement addressed to the Hon'ble Prime Minister, Government of India by the workman.

M6 - Confidential letter No.P(A)94/J/138 dated 14.12.1998 (in original) issued by the Dy. Chief Personnel Officer/T, Southern Railway, Headquarters Office, Personnel Branch, Chennai – 600003 to the workman.

नई दिल्ली, 28 जून, 2016

का.आ. 1343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 18/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/55/2015-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2016

S.O. 1343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.06.2016.

[No. L-12011/55/2015-IR (B-1)]

RANBIR SINGH, Section Officer

ANNEXURE**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH****Case No. ID No. 18 of 2015**

Reference No. L-12011/55/2015-IR (B-1) dated 25.09.2015

Sh. Bhabani Shankar Sithas son of Shri Harihar Sithas,
House No. 1588, Maruti Kunj, Bhondsi,
Gurgoan (Haryana)-122102

...Workman

Versus

The General Manager, SBI, RBO-II,
Qutub Plaza, DLC City-Phase-1,
Gurgoan (Haryana)-122002.

The Branch Manager, State Bank of India,
Sector-56, Branch Gurgoan (Haryana) 212201

...Respondents

Appearances :

For the Workman : None

For the Management : Shri Kapil Kakkar Advocate.

AWARD

Passed on:- 24.02.2016

Government of India Ministry of Labour vide notification No. L-12011/55/2015-IR (B-1) dated 25.09.2015 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of State Bank of India, Gurgoan in terminating the services of the workman Shri Bhabani Shankar Sitha son of Shri Harihar Sitha is justified or not? If not, what relief the workman is entitled to and from which date?”

2. Case repeatedly called. None appeared for the workman nor any claim statement has been filed by the workman despite opportunities. Shri Kapil Kakkar advocate is present for the management. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

3. Reference is disposed off accordingly. Central Govt. be informed.

Chandigarh
24.02.2016

S. P. SINGH, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 13/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12025/01/2016-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2016

S.O. 1344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.06.2016.

[No. L-12025/01/2016-IR (B-1)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No. 13 of 2012

Shri Sonu son of shri Brijpal r/o House No. 2445,
Sector 38-C, Chandigarh presently working as a peon
in the State Bank of India, Phase I, Mohali

...Workman

Versus

1. The State Bank of India, Phase - I,
Mohali, through its Manager

...Respondent

Appearances :

For the Workman : Sh. Dinesh Ghai, Advocate
For the Management : Sh. S.K. Gupta, Advocate.

AWARD

Passed On:- 19th February, 2016

1. The workman raised the dispute directly to this Tribunal regarding his regularization of service by the respondent management of State Bank of India on the certificate issued by the Assistant Labour Commissioner (Central), Chandigarh vide its letter dated 11th of April 2012 under Section 2(a)2 of the Industrial Disputes Act, 1947 as the conciliation proceedings not concluded in prescribed time under the law. The workman filed claim statement stating there in that workman is working as a peon cum water carrier cum sweeper with the management for the last about 7 years on daily wages. No appointment letter was issued and the salary is paid to the workman on monthly basis showing the weekly breakup which comes to the average of about Rs. 4500/- per month. The workman attached various receipts showing the payment of salary. It is further pleaded that workman entitled and eligible for regularization of services as per existing policy of the bank as workman is working in the bank of last seven years. The workman worked for more than 240 days continuously in the preceding year and is continuing with the management. It is further pleaded by the workman that as per information of the workman through some reliable sources one similarly situated employee Shri Mohan Singh who was also appointed as a daily wager sweeper under the management, his services have been regularized about four years ago under the rules and regulations and Shri Mohan Singh is presently working on higher post of messenger in the same branch where the workman is working and the management cannot be allowed to have pick and choose method which is violative of articles 14 and 16 of the Constitution of India. It is prayed that the workman may be regularized in service along with the backwages. It is also pleaded by the workman that in case he is shunted out from the service, may be reinstated in service with all other benefits along with interest @18% per annum.

2. The management filed written statement, Preliminary objection has been taken that the workman was never employed by the management at any time and there is no question of terminating his services. It is further pleaded that one Smt.Karnail Kaur was initially appointed as part time sweeper on 15.9.1974 on the basis of 1/3rd salary as per rules of the bank and thereafter she was promoted on ½ salary w.e.f. 1.8.1977 and on ¾ salary w.e.f. 1.3.1985 and she was promoted on full wages w.e.f. 1.9.1988 and after retirement of Smt. Karnail Kaur contract for cleaning the branch was given to M/s. Shiv Enterprises up to 8.4.2010. It is pleaded that Shri Mohan Singh was working with the management as full time casual labour on daily wages and he was absorbed in the bank services as general attendant in April 1997 through employment exchange after performing all the legal requirement by the competent authority. It is further pleaded that no industrial dispute exists in the matter and workman has no cause of action . It is further pleaded that the branch manager has no power or authority to appoint any one in the bank. It is also pleaded that there exists no relationship of employer and employee. The workman also does not fall within the definition of workman as he has not completed requisite number of 240 days of service in the preceding year. On merits it is pleaded that the workman was never appointed by the management as peon cum water carrier and there is no post of peon cum water carrier in the bank. It is submitted that the services of the workman were availed by the Phase -I Mohali branch for sweeping of branch premises intermittently purely on daily wages and he was paid at daily rates for the number of days for which his services were availed by the branch. The applicant was the employee of M/s. Anand TV Centre, Sector 46, Chandigarh and after 10AM he was performing the duty of an generator operator installed by the said TV Centre and he was getting Rs. 1500/- per month from M/s. Anand TV Centre. It is further pleaded that the applicant was never employed by the management and there is no question of issuance of any appointment letter. It is also pleaded that the applicant started abstaining then one Parvesh was hired to perform the duty of sweeper to clean the branch premises and payment was made to him for the day he had worked. It is prayed by the management that the workman is not entitled for any relief and the dispute may be answered in favour of the management.

3. Rejoinder also filed by the workman reiterating the claim made in the claim statement.
4. The workman filed his affidavit Ex.W1 in evidence the contents of which are repetition of the claim statement. The management filed one affidavit Ex.M1 of Shri Radhey Shyam Sambhria Chief Manager in evidence. The witnesses of the parties were examined and cross-examined.
5. The workman in his claim statement has sought regularization of his services as per policy of the respondent bank. The workman also mentioned in his claim statement that if the management bank take the stand that the workman has been shunted out, then in the same eventuality, the workman may be reinstated with full back wages and all other benefits. The management has submitted that the workman was not appointed by management. Workman was engaged to clean the bank premises and the workman was paid on the basis of daily rate basis. The workman in his cross-examination stated that “no interview or test was conducted for the post. No appointment letter issued to me----. I was paid monthly salary by cheque. I was engaged on daily wages for cleaning of the bank”. The workman himself admitted that he was not appointed as per recruitment rules of the bank. In this regard management in its written statement in para no.4 placed on reliance on some case laws. In para no.4 of the written reply it is mentioned that branch manager has no power or authority to appoint anyone in the bank. The management has placed reliance on judgment Benrena Vs. Ajit Singh and another 2003(5) SLR 766, Hoshiarpur Central Cooperative Bank Limited Hoshiarpur Vs. Presiding Officer Labour Court, Jalandhar, 2005(104)FLR 574 and Judgement of the Hon'ble Supreme Court in Himanshu Kumar Vidyarthi Vs. State of Bihar, AIR 1997 SC 3657. It has been held that the appointment of the petitioner was made without any sanction from the concerned authority and was a back door entry and in such a situation Section 25-F of the Act was not applicable. The above mentioned judgments have been further reiterated in Judgments of the Hon'ble Supreme Court, inter-alia, in Reserve Bank of India Vs. Gopinath Sharma and another, (2006)6 SCC 221, Municipal Counsel Samrala Vs. Raj Kumar (2006) 3 SCC 81, Gangadhar Pillai Vs. Siemens Ltd.(2007) 1 SCC 533 and State of U.P. Vs. Neeraj Awasthi (2006)1 SCC667, Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, (2007)1SCC 408 and U.P.: Power Corporation Ltd. and another Vs. Bijli Majdoor Sangh and others, (2007)5SCC 755. Besides this the management also relied upon the following case laws:
 1. 2008 (1) SLR 670 G.M.Tanda ThermalPower Project Vs. Jai Prakash Srivastava and another.
 2. 2003(4)RSJ 781 Head Master Govt. High School Behrana Vs. Ajit Singh and another.
 3. AIR 1994 Supreme Court 1638 Madhyamik Siksha Prishad U.P. Vs. Anil Kumar Mishra and others.
 4. AIR 1997 Supreme Court 3657 Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others.
 5. Civil Writ Petition No.7344 of 2007 CIPE Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Chandigarh and another decided on 14-11-2007.
 6. Civil Writ Petition No. 12303 of 2006 Balbir Singh Vs. P.O.Labour Court and another decided on 21-08-2007.
6. The workman submitted that the management forced the workman to mention his name as Parvesh instead of Sonu to deny the claim of the workman. In this regard the workman drawn my attention to Ex.W-24 wherein it has been mentioned that Bhartia State Bank Mohali, 16-11-11 to 30-11-11, 13days charges for safai @ Rs.200/- per day comes to Rs.2600/- given to Parvesh. Like wise in Ex.-25 cleaning charges for 13 days @ Rs.250/- w.e.f. 1-11-11 to 15-11-11 comes to Rs.3250/- paid to Parvesh. The management in this context explained that workman absented himself from the cleaning work and during this period the services of Parvesh was hired for cleaning work.
7. Workman also mentioned that one daily wager Sh. Mohan Singh was appointed as sweeper under the management and his services were regularized about 4years ago under the rules and regulations of the respondent bank and Mohan Singh is presently working at higher post of messenger in the same branch where the workman is working. In this context the management submitted that Sh. Mohan Singh was working with the respondent management as full time casual labour and he was absorbed in the bank services as general attendant in April 1997 through employment exchange after performing all the legal requirement by the competent authority and not by the answering respondent i.e. branch manager.
8. While summing up, in the above fact and situation it is clear that workman was not appointed adhering to the recruitment rules or after following the due procedure. The workman is working intermittently on need basis on daily wages for cleaning work. In this situation as held by the Hon'ble Supreme Court and High Courts that back door entries not permitted and thus the applicant is not entitled to regularization in service. As there is no relationship of employer and employee between the management and the workman and specifically there is no evidenced i.e. services have been disengaged and as held by the Supreme Court in AIR 1997 SC page 3657 (Supra) holding that , daily wage employees - Appointment made on basis of need of work – Termination of their services- Cannot be construed to be retrenchment- Same is also not arbitrary as they were not entitled to post. Therefore, in the facts and circumstances, the workman is not entitled to any relief of regularization.

9. The industrial dispute is answered accordingly. Central Govt. be informed.

Chandigarh
19-02-2016

S. P. SINGH, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1345.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स जीबीटी इंडिया प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ सं. 24/1993) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/71/93-आईआर (बी-I)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2016

S.O. 1345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/1993) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of M/s. GBT India Pvt. Ltd. and their workmen, received by the Central Government on 20.06.2016.

[No. L-12012/71/93-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 24 of 1993

Parties:

Employers in relation to the management of GBT India Pvt. Ltd.

(Formerly American Express Bank Ltd.)

A N D

Their workmen

Present :

Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the Management : Mr. Soumen Das, Ld. Counsel.

On behalf of the Workmen : Mr. Ashis Kumar Das, Ld. Counsel.

State : West Bengal

Industry : Banking

Dated: 2nd March, 2016

AWARD

By Order No.L-12012/71/93-IR(B-I) dated 02.04.1993 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether Shri Chandi Charan Kayak, Travel Counselor of American Express Bank Ltd. is a workman within the meaning of Section 2(s) of the I.D. Act, 1947? If so, whether the action of the management in terminating his service w.e.f. 29-1-91 is justified? If not, to what relief the workman is entitled to and from which date?”

2. When the case is taken up today for hearing, Ld. Counsel for the concerned workman files an application for disposing of the present reference by passing a "No Dispute Award". He also refers to the application dated 16.02.2016 filed by the management.

3. Heard the parties present before the Tribunal. Perused also the application filed on behalf of the concerned workman today, application dated 16.02.2016 and the agreement filed.

4. It appears from the applications and the agreement filed on behalf of the parties that the concerned workman has already received a draft amounting to Rs.1000000/- towards the claim of Provident Fund, Gratuity, monthly salaries and other dues and accordingly he has got no grievance regarding termination of his service. Ld. Counsel for the workman further submits that since the matter has been amicably settled between the parties, the concerned workman does not want to proceed with the case further.

5. In view of the above, instant reference is disposed of by passing a "No Dispute Award".

Dated, Kolkata,

The 2nd March, 2016

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1346.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 86/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/68/2012-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2016

S.O. 1346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the management of ICICI Bank Limited and their workmen, received by the Central Government on 20.06.2016.

[No. L-12012/68/2012-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 86/2014

Reference No. L-12012/68/2012-IR(B-I) dated: 3.12.2014

Shri Kailash Chand Sain
S/o Shri Kanhaiya Lal Sain
R/o Plot No.85, Hasanpura-C,
Kamla Nehru Nagar,
Jaipur

V/s

The Chief Manager
I.C.I.C.I Bank Limited
Central Office, C-3,
S.P.Marg, C-Scheme,
Jaipur.

AWARD

29.1.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रवंधन आई.सी.आई.सी.आई. बैंक लि. जयपुर, के द्वारा कर्मकार श्री कैलाश चंद सैन, चतुर्थ श्रैणी कर्मचारी को मौखिक आदेश दिनांक 21.8.2002 के द्वारा नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है ? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal fixing 16.3.2015 for filing statement of claim. On 16.3.2015 applicant Sh. Kailash Chand Sain was personally present & requested for time to file statement of claim. Opposite party was absent, case was adjourned fixing 26.5.2015 for filing statement of claim. Acknowledgement relating to registered notice sent to applicant has been received back which is available on record.

3. On 26.5.2015 both the parties were absent, presiding officer was on leave. Next date 24.8.2015 was fixed for filing statement of claim by applicant. On 24.8.2015 authority of Sh. Alok Fatehpuria, learned representative of opposite party was filed by opposite party. Applicant remained absent & did not file statement of claim. Next date 16.11.2015 was fixed for filing statement of claim. On 16.11.2015 applicant was absent. Opposite party was present. Statement of claim was not filed. 29.12.2015 was next date fixed for filing statement of claim. On 29.12.2015 statement of claim was not filed & both the parties were absent. In the interest of justice case was adjourned providing last opportunity to the applicant for filing statement of claim. 28.1.2016 was next date fixed for filing statement of claim by applicant. After order learned representative for opposite party appeared & he was informed about the next date 28.1.2016.

4. On 28.1.2016 both the parties were absent & case was fixed for taking up in the afternoon. In the afternoon applicant did not appear & statement of claim was not filed. Learned representative for opposite party was present who objected to the adjourning of the case & alleged that how many more opportunities will be extended to the applicant. Looking into continuous non appearance of the applicant since 16.3.2015 opportunity for filing statement of claim was closed & case was reserved for passing award.

5. It is pertinent to note that reference order dated 3.12.2014 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of statement of claim & material evidence brought on record, tribunal is unable to record the finding on the reference sent to the tribunal for adjudication on merit. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 29 जून, 2016

का.आ. 1347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईटीआई लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 03/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-40011/01/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 29th June, 2016

S.O. 1347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 03/2012) of the Central Government Industrial Tribunal-Cum-Labour-Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the ITI Ltd. and their workman, which was received by the Central Government on 27.06.2016.

[No. L-40011/01/2011-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 03/2012

Ref. No. L-40011/01/2011-IR(DU) dated 29.12.2011

BETWEEN :

Sri Mahendra Pratap Singh
 C/o Indian Telephone Industries Ltd. Mazdoor Sangh
 Sector-I, Doorbhash Nagar
 Raibareli (U.P.)

AND

The General Manager,
 ITI Ltd., Doorbhash Nagar
 Raibareli (UP),
 RAIBARELI

AWARD

1. By order No. L-40011/01/2011-IR(DU) dated 29.12.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Mahendra Pratap Singh, ITI, Raibareli and the General Manager, ITI, Raibareli for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF ITI LTD., RAEBALELI, IN NOT GRANTING TIMELY PROMOTION AND BENEFIT OF EARNED LEAVE OF SRI MAHENDRA PRATAP SINGH, IN CONTRADICTION TO THE INSTRUCTION CONTAINED IN THEIR MODIFIED ORDER DATED 19.06.2007, IS LEGAL AND JUSTIFIED? WHAT RELIEF THE WORKMAN IS ENTITLED TO ??”

3. As per the claim statement W4, the workman has stated in brief that he was appointed as Assembly Operator in Grade-B on 08.04.1984 (Employee No. 56490), he was wrongly suspended on 29.10.1999 and charge sheet on frivolous ground was served on 26.02.2000 and domestic enquiry was conducted; the workman was not provided any opportunity to defend himself. It has further been stated that in pursuance of order dated 22.10.2001 issued by the competent authority the appeal moved by the petitioner was considered and punishment was reduced to that of CENSOR vide order dated 31.05.2002 but order regarding suspension was kept maintained.

4. The workman has stressed that aggrieved from the order dated 22.10.2001 he moved an application before RLC (C) Lucknow, who directed to management on 26.03.2007, to set aside the punishment order dated 22.10.2001, consequently order dated 19.06.2007 was issued and previous order dated 22.10.2001 and 31.05.2002 were reviewed and the petitioner was treated on duty, subsistence allowance was adjusted, with other benefits. The workman has stated that the order dated 19.06.2007 issued by the management is not being followed by the opposite party, special leave encashment has not been granted, promotion was not provided; which is wrong and illegal and the petitioner has not been given the benefit of promotion etc. like other fellow employees, some of whom have been promoted six months earlier. With the aforesaid pleadings the workman has requested to sanction special leave encashment for 40 days for the suspension period and to grant him timely promotion. Several annexures have been filed along with claim statement.

5. The management has filed written statement M-7 wherein it has been pleaded that timely promotion was given to the workman, concocted story has been framed by the workman which is beyond the truth. The management has emphasized that leave encashment of petitioner is governed by the leave policy, since applicant had not worked till his reinstatement following his suspension therefore he was not entitled to leave encashment. The opposite party has stated that reference is bad in the eyes of law. The allegations leveled in the claim statement has been denied by the management and it has been stated that fair and proper domestic enquiry was conducted and sufficient opportunity was provided to the workman to defend himself after conclusion of the enquiry, punishment of stoppage of 2 annual increment for ever with cumulative effect was awarded vide order dated 22.10.2001 and suspension was treated as leave without pay except the suspension later on the appeal was considered and a minor punishment was awarded. The punishment of suspension was changed. Keeping in view proceedings before RLC (C) Lucknow, it was found that CENSOR was legal and justified; regarding suspension it was clarified that period was treated on duty, the workman has

submitted an affidavit that he will not agitate this issue in any court of law and all the benefits in furtherance of the order of 19.06.2007 have already been given to the workman as per Company Rules. The management has requested to dismiss the claim statement.

6. The management's leave encashment Rule has been filed by the opposite party, along with relevant Standing Orders etc.

7. Despite sufficient opportunity, the workman has not filed rejoinder, neither any oral evidence/affidavit in support of the claim statement has been filed. Therefore the management also decided to refrain from filing any affidavit etc. The workman has not appeared in the court for the last more than 10 dates. In such circumstances arguments of the learned AR for the management were heard at length and record has been perused thoroughly.

8. During the argument it was pointed out that perhaps due to time promotion etc. grievance of the workman might have been settled, therefore he has been reluctant to file any affidavit before this Tribunal.

9. The proceedings were initiated by the management in pursuance of the directions given by RLC (C), Lucknow. There is no evidence on record which indicates that the domestic enquiry was prejudiced in any way or sufficient opportunity was not provided to the workman. The workman was at liberty to defend himself and to adduce the evidence of his choice. Copy of the Standing Orders has been filed by the management, in support of the stand taken by the opposite party in its written statement. Following pronouncements of Hon'ble Courts have been relied upon by the management;

1. 2008 (118) FLR, 1164 Allahabad High Court M/s Uptron Powertronics Employees Union, Ghaziabad vs Presiding Officer, Labour Court (II) Ghaziabad and others.
2. 2000(126) FLR 519, Allahabad High Court, District Administrative Committee, U.P. P.A.C.C.S.C Services V/s Secretary-cum-G.M. District Cooperative Bank Ltd.,
3. 1981 FLR Page 194 Allahabad High Court VK Raj Industries Vs Labour Court (I) and others.

10. The basic principle of law is quite clear. The allegations leveled in the claim statement have to be proved by cogent and reliable evidence. Despite the fact that sufficient opportunity was provided by this Tribunal to the workman, he failed to adduce any concrete evidence in support of the claim statement. The opposite party management has corroborated the version pleaded in its written statement. After having heard the learned AR for the opposite party and in the light of pronouncements of Hon'ble Courts mentioned herein above, it is inferred that the action of the ITI management in not granting allegedly timely promotion and so called benefit of leave encashment to the workman, is quite legal and justified. The workman is not entitled to any relief.

11. Award accordingly.

13.06.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 27 जून, 2016

का.आ. 1348.—कर्मचारी राज्य बीमा अधिनियम, 1948(1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 जुलाई, 2016 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी हैं) अध्याय-5 और 6 [धारा-76 की उप धारा (1) और धारा -77, 78 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध तेलंगाना राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

| क्रम संख्या | जिलों के नाम |
|-------------|--------------|
| 1. | अदिलाबाद |
| 2. | खम्मम |

[सं. एस-38013/26/2016-एस.एस.-1]

अजय मलिक, अवर सचिव

New Delhi, the 27th June, 2016

S.O. 1348.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st July, 2016, as the date on which the

provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following entire districts (including already implemented areas) in the State of Telangana, namely:—

| Sr. No. | Name of the District |
|---------|----------------------|
| 1. | Adilabad |
| 2. | Khammam |

[No. S-38013/26/2016-S.S.-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 27 जून, 2016

का.आ. 1349.—कर्मचारी राज्य बीमा अधिनियम, 1948(1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 जुलाई, 2016 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी हैं) अध्याय-5 और 6 [धारा-76 की उप धारा (1) और धारा -77, 78 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध हरियाणा राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

| क्रम संख्या | जिले का नाम |
|-------------|-------------|
| 1. | फरीदाबाद |

[सं. एस-38013/28/2016-एस.एस.-1]

अजय मलिक, अवर सचिव

New Delhi, the 27th June, 2016

S.O. 1349.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st July, 2016, as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following entire districts (including already implemented areas) in the State of Haryana, namely:—

| Sr. No. | Name of the District |
|---------|----------------------|
| 1. | Faridabad |

[No. S-38013/28/2016-S.S.-I]

AJAY MALIK, Under Secy.